

AMENDED IN ASSEMBLY MAY 4, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2112

Introduced by Assembly Member Dutra

February 22, 2000

An act to amend Sections 7019, 7019.1, 7030, 7085, 7090, 7091, and 7111 of, to add Sections 7026.15 and 7086 to, and to add Chapter 4 (commencing with Section 17800) to Part 3 of Division 7 of, the Business and Professions Code, to amend Sections 1351, 1354, 1355.5, 1356, 1357, 1364, 1365, 1365.7, 1368, 1368.4, 1375, and 1375.1 of the Civil Code, to amend Sections 1298 and 1298.7 of the Code of Civil Procedure, and to amend Section 120 of the Insurance Code, relating to new home warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2112, as amended, Dutra. Home warranty program.

(1) Existing law permits the registrar of contractors to investigate and discipline a contractor who has violated provisions of the Contractors' State License Law, which discipline can include requiring the contractor to correct construction defects that are the result of the contractor being found to have violated provisions of the Contractors' State License Law.

This bill would express the Legislature's findings and declarations relating to a lack of construction of ~~multifamily~~ *affordable* housing, ~~including condominiums and townhouses,~~ ~~due to defect litigation,~~ and that there is a substantial need for

a highly effective state-sanctioned 10-year new home warranty program to provide both a process for resolving claims and a mechanism to ensure quality design and construction.

This bill would establish the California Homebuyer Protection and Quality Construction Act of ~~2000~~ 2001. The bill would permit a licensed contractor to apply to the Contractors' State License Board to be certified as a participating home builder, which would mean that the contractor could issue a California Home Construction Warranty, as defined. The bill would require the Contractors' State License Board to promulgate regulations and to annually review the certification, as specified.

The bill would require a California Home Construction Warranty to meet specified minimum standards and procedures. The bill would permit a participating home builder to issue a California Home Construction Warranty on new residential housing, including a home that is part of a common interest development, where the purchaser secured title on or after January 1, ~~2000~~ 2001. The bill would provide that a California Home Construction Warranty applies for a minimum of 10 years, and is binding on subsequent purchasers during the term of the warranty.

The bill would define "construction defects." The bill would define "correction of any construction defect" to include repair, replacement, or payment of reasonable cost to repair or replace, pursuant to existing construction codes and standards of construction practice in effect at the time of the original construction, or at the builder's option, subject to the dispute resolution provisions of the warranty, either rebuilding the structure in accordance with the original plans and specifications, *and any modifications, as specified*, or paying the reasonable value of the property plus relocation costs.

The bill would permit a California Home Construction Warranty to provide for alternative dispute resolution, as specified, for claims covered under the warranty. The bill would provide that if a homeowner elects by contract to purchase a home subject to a California Home Construction Warranty, the contractual provisions of that warranty shall be



deemed to be the exclusive election of recourse by the homeowner and the participating homebuilder for the claims covered by the warranty. The bill would provide that the parties to a California Home Construction Warranty are deemed to have waived any tort remedies, including negligence, strict liability, implied warranties, or any other common law remedy other than for breach of warranty contract and the provisions therein. The bill would provide that the waiver does not preclude or limit any right of action for bodily injury, wrongful death, or fraud and intentional misrepresentation. The bill would also provide that to the extent that a California Home Construction Warranty does not contain coverage for alleged defects, there would be no election of recourse, and that the homeowner, if the warranty provides, waives any noncontractual claims against any design, professional, or trade contractors covered by the warranty who performed professional services or works of improvement on the subject property.

The bill would require a participating home builder to have a program of quality assurance, as specified.

This bill would provide that a homeowner's rejection of a builder's reasonable offer during the ~~alternative~~ dispute resolution process would limit recovery, as specified. The bill would further provide that limitations on damages, as specified, would not apply if a builder fails to make a reasonable offer during the ~~alternative~~ dispute resolution process or fails to complete repairs, as specified. The bill would also provide that if a builder does not take reasonable steps in a reasonable time to correct a defect creating an imminent threat to the inhabitants of a house the homeowner may correct the defect and recover from the builder, as specified.

(2) Existing law provides specified procedures relating to binding arbitration provisions in any contract to convey real property. Existing law also provides in the event of an arbitration provision in a contract to convey real property, it shall not preclude or limit any right of action for bodily injury or wrongful death or for any right of action as specified or actions for damages relating to design specifications, surveying, planning supervision or observation of construction or construction improvement to real property,



or latent deficiencies, in the construction or construction improvement of real property.

This bill would ~~include within those provisions provide that the procedures regarding binding arbitration provisions in contracts to convey real property may apply to a dispute that arises under a California Home Construction Warranty that contains a binding arbitration provision, and may apply to the real property in question. This bill would also limit the provision~~ provide instead that an arbitration provision shall not preclude or limit any right of action to actions for bodily injury or wrongful death.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7019 of the Business and
2 Professions Code is amended to read:

3 7019. (a) If funding is made available for that
4 purpose, the board may contract with licensed
5 professionals, as appropriate, for the site investigation of
6 consumer complaints, including complaints arising under
7 a California Home Construction Warranty issued
8 pursuant to the California Homebuyer Protection and
9 Quality Construction Act of 2000. The registrar shall
10 determine the rate of reimbursement for licensed
11 professionals performing inspections on behalf of the
12 board. All reports shall be completed on a form
13 prescribed by the registrar.

14 (b) As used in this section, “licensed professionals”
15 means, but is not limited to, engineers, architects,
16 landscape architects, and geologists licensed, certificated,
17 or registered pursuant to this division.

18 SEC. 2. Section 7019.1 of the Business and Professions
19 Code is amended to read:

20 7019.1. (a) On and after July 1, 1998, the board shall
21 furnish a copy of any opinion prepared by the licensed
22 professional, including any contractor, retained pursuant
23 to Section 7019, to the complainant, to the licensee against
24 whom the complaint has been made, and, upon request,

1 to the successors, receivers, trustees, executors,
2 administrators, assignees, or guarantors of either party, if
3 directly or collaterally interested under this chapter or
4 otherwise as provided by law, and to a warranty
5 administrator under contract with a participating
6 homebuilder pursuant to Chapter 4 (commencing with
7 Section 17800) of Part 3 of Division 7.

8 (b) The opinion specified in subdivision (a) shall
9 include all of the following:

10 (1) An identification of the nature of the condition that
11 produced the complaint and the cause or basis or
12 contributing cause of that condition.

13 (2) Whether the cause or basis of the condition
14 complained of constituted a departure from plans, codes,
15 or accepted trade standards.

16 (3) What the code provisions or trade standards
17 specified in paragraph (2) are.

18 (4) The cost to correct each item identified under
19 paragraph (2) as being the result of a departure from
20 plans, specifications, codes, or accepted trade standards.

21 (5) The cost to correct the damages specified in
22 paragraph (4) was established on the following basis:

- 23
- 24 ☐ Time and Materials
- 25 ☐ Unit Cost
- 26 ☐ Other (identify) _____
- 27 and was calculated from standards provided by
- 28 ☐ Means Data Systems
- 29 ☐ Dodge Data Systems
- 30 ☐ National Construction Estimator
- 31 ☐ Marshall-Swift
- 32 ☐ Software Program (identify) _____
- 33 ☐ Other (identify) _____
- 34

35 (c) The opinion shall also provide the name,
36 identification, address, license number, and license
37 classification or classifications of the professional who
38 prepared the opinion, and a statement of any other
39 qualifications that the professional asserts he or she relied
40 upon as stated in the industry expert report submitted to

1 the board. The license and other information required to
2 be furnished under this subdivision may be provided on
3 a form prescribed by the registrar.

4 The opinion shall also state the date or dates of any
5 inspection of the site or other investigation and the date
6 of the report. If the complaint arises under a California
7 Home Construction Warranty issued pursuant to Chapter
8 4 (commencing with Section 17800) of Part 3 of Division
9 7, the report of the investigator shall provide the name
10 and address of the warranty administrator under contract
11 with a participating homebuilder and the actions taken
12 by the warranty administrator or the participating
13 homebuilder under the warranty to resolve the
14 complaint with the complainant. The board shall
15 endeavor to assure that all items in subdivision (b) that
16 are subject to the pertinent cause of action are completed
17 on the report.

18 (d) The board shall make the opinion available on, or
19 promptly following, the earliest date upon which the
20 opinion or the information from it is available for the
21 purpose of mediation or the purpose of preparing a
22 citation pursuant to Section 7099, or to any arbitrator or
23 arbitration panel, or the date of service of any accusation
24 pursuant to Section 11505 of the Government Code on
25 any matter upon which the opinion relates, and to a
26 warranty administrator under contract with a
27 participating homebuilder pursuant to Chapter 4
28 (commencing with Section 17800) of Part 3 of Division 7.

29 (e) The board may impose a charge for furnishing a
30 copy of an opinion pursuant to this section to any person
31 except the complainant or the licensee against whom the
32 complaint has been made. The charge shall be reasonably
33 related to the cost of preparing and transmitting that
34 copy and of processing the request.

35 (f) This section shall become inoperative on July 1,
36 2001, and, as of January 1, 2002, is repealed, unless a later
37 enacted statute, that becomes operative on or before
38 January 1, 2002, deletes or extends the dates on which it
39 becomes inoperative and is repealed.



(g) Nothing in this section shall be construed to supercede, amend, or otherwise modify the terms and conditions, the complaint and claims processing procedures, or the dispute resolution procedures, agreed to by the parties to a California Home Construction Warranty issued pursuant to the California Homebuyer Protection and Quality Construction Act of 2000. Upon receipt of the report referred to in this section, the board shall defer action on the complaint until the complaint, claims, and dispute resolution procedures provided for in the warranty have been exhausted by the parties, unless the report includes a finding that the participating homebuilder or warranty administrator under contract with the homebuilder has not complied with the terms and conditions of the warranty, nor the complaint, claims, and dispute resolution procedures provided therein.

SEC. 3. Section 7026.15 is added to the Business and Professions Code, to read:

7026.15. For purposes of this chapter, “contractor” does not include a warranty administrator under contract with a participating homebuilder to provide services under a California Home Construction Warranty issued pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7.

SEC. 4. Section 7030 of the Business and Professions Code is amended to read:

7030. (a) Every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts, including in California Home Construction Warranties issued pursuant to Chapter 4 (commencing with Section 17800) of Part 3 of Division 7, with respect to which the person is a prime contractor:

“Contractors are required by law to be licensed and regulated by the Contractors’ State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed

1 within 10 years of the date of the alleged violation. Any
2 questions concerning a contractor may be referred to the
3 Registrar, Contractors' State License Board, P.O. Box
4 26000, Sacramento, California 95826."

5 (b) At the time of making a bid or prior to entering
6 into a contract to perform work on residential property
7 with four or fewer units, whichever occurs first, a
8 contractor shall provide the following notice in capital
9 letters in at least 10-point roman boldface type or in
10 contrasting red print in at least 8-point roman boldface
11 type:

12
13 "STATE LAW REQUIRES ANYONE WHO
14 CONTRACTS TO DO CONSTRUCTION WORK TO BE
15 LICENSED BY THE CONTRACTORS' STATE
16 LICENSE BOARD IN THE LICENSE CATEGORY IN
17 WHICH THE CONTRACTOR IS GOING TO BE
18 WORKING—IF THE TOTAL PRICE OF THE JOB IS
19 \$500 OR MORE (INCLUDING LABOR AND
20 MATERIALS).

21
22 LICENSED CONTRACTORS ARE REGULATED BY
23 LAWS DESIGNED TO PROTECT THE PUBLIC. IF
24 YOU CONTRACT WITH SOMEONE WHO DOES NOT
25 HAVE A LICENSE, THE CONTRACTORS' STATE
26 LICENSE BOARD MAY BE UNABLE TO ASSIST YOU
27 WITH A COMPLAINT. YOUR ONLY REMEDY
28 AGAINST AN UNLICENSED CONTRACTOR MAY BE
29 IN CIVIL COURT, AND YOU MAY BE LIABLE FOR
30 DAMAGES ARISING OUT OF ANY INJURIES TO THE
31 CONTRACTOR OR HIS OR HER EMPLOYEES.

32
33 YOU MAY CONTACT THE CONTRACTORS' STATE
34 LICENSE BOARD TO FIND OUT IF THIS
35 CONTRACTOR HAS A VALID LICENSE. THE
36 BOARD HAS COMPLETE INFORMATION ON THE
37 HISTORY OF LICENSED CONTRACTORS,
38 INCLUDING ANY POSSIBLE SUSPENSIONS,
39 REVOCATIONS, JUDGMENTS, AND CITATIONS.
40 THE BOARD HAS OFFICES THROUGHOUT

1 CALIFORNIA. PLEASE CHECK THE GOVERNMENT
2 PAGES OF THE WHITE PAGES FOR THE OFFICE
3 NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE
4 INFORMATION.”

5
6 (c) Failure to comply with the notice requirements set
7 forth in subdivision (a) or (b) of this section is cause for
8 disciplinary action.

9 SEC. 5. Section 7085 of the Business and Professions
10 Code is amended to read:

11 7085. (a) After investigating any verified complaint
12 alleging a violation of Section 7107, 7109, 7110, 7113, 7119,
13 or 7120, and any complaint arising from a contract
14 involving works of improvement as defined in Section
15 7151 and finding a possible violation, the registrar may,
16 with the concurrence of both the licensee and the
17 complainant, refer the alleged violation, and any dispute
18 between the licensee and the complainant arising
19 thereunder, to arbitration pursuant to this article,
20 provided the registrar finds that:

21 (1) There is evidence that the complainant has
22 suffered or is likely to suffer material damages as a result
23 of a violation of Section 7107, 7109, 7110, 7113, 7119, or
24 7120, and any complaint arising from a contract involving
25 works of improvement as defined in Section 7151.

26 (2) There are reasonable grounds for the registrar to
27 believe that the public interest would be better served by
28 arbitration than by disciplinary action.

29 (3) The licensee does not have a history of repeated or
30 similar violations.

31 (4) The licensee was in good standing at the time of the
32 alleged violation, and is in good standing at the time of
33 referral to arbitration.

34 (5) The licensee does not have any outstanding
35 disciplinary actions filed against him or her.

36 (6) The parties have not previously agreed to private
37 arbitration of the dispute pursuant to contract, in a
38 California Home Construction Warranty issued pursuant
39 to Chapter 4 (commencing with Section 17800 of Part 3
40 of Division 7, or otherwise.

1 (7) The parties have been advised of the provisions of
2 Section 2855 of the Civil Code.

3 For the purposes of paragraph (1), “material damages”
4 means damages greater than five thousand dollars
5 (\$5,000) and less than fifty thousand dollars (\$50,000).

6 (b) In all cases in which a possible violation of the
7 sections set forth in paragraph (1) of subdivision (a) exists
8 and the contract price is equal to or less than five
9 thousand dollars (\$5,000), or the demand for damages is
10 equal to or less than five thousand dollars (\$5,000)
11 regardless of the contract price, the complaint shall be
12 referred to arbitration, utilizing the criteria set forth in
13 paragraphs (2) to (6), inclusive, of subdivision (a).

14 SEC. 6. Section 7086 is added to the Business and
15 Professions Code, to read:

16 7086. Nothing in this article shall be construed to
17 supersede, amend, or otherwise modify the terms and
18 conditions, and the complaint, claims, and dispute
19 resolution procedures agreed to by parties to a California
20 Home Construction Warranty.

21 SEC. 7. Section 7090 of the Business and Professions
22 Code is amended to read:

23 7090. The registrar may upon his or her own motion
24 and shall upon the verified complaint in writing of any
25 person, investigate the actions of any applicant,
26 contractor, participating homebuilder certified to offer
27 home construction warranties pursuant to Chapter 4
28 (commencing with Section 17800) of Part 3 of Division 7,
29 or home improvement salesperson within the state and
30 may deny the licensure, certification, or the renewal of
31 licensure or certification of, or cite, temporarily suspend,
32 or permanently revoke any license, certification, or
33 registration if the applicant, licensee, participating
34 homebuilder certified to offer home construction
35 warranties pursuant to Chapter 4 (commencing with
36 Section 17800) of Part 3 of Division 7, or registrant, is
37 guilty of or commits any one or more of the acts or
38 omissions constituting causes for disciplinary action.

39 The registrar may proceed to take disciplinary action
40 as in this article provided against an applicant or a person

1 licensed or registered under the provisions of this
2 chapter, or certified pursuant to Section 17815, even
3 though the grounds or cause for such disciplinary action
4 arose upon projects or while the applicant, licensee, or
5 registrant was acting in a capacity or under circumstances
6 or facts which, under the provisions of Sections 7044, 7045,
7 7046, and 7048, would otherwise exempt the person or his
8 or her operations from the provisions of this chapter.

9 Notwithstanding any provision of this chapter, if the
10 registrar finds that any contractor licensed or registered
11 under the provisions of this chapter has willfully and
12 deliberately violated any state or local law relating to the
13 issuance of building permits, other than failure to obtain
14 a county or city permit for repair, maintenance, and
15 adjustment of equipment where such repair,
16 maintenance, or adjustment is valued at less than five
17 hundred dollars (\$500) for labor or materials, or where
18 the repair of a part or component part of mechanical
19 equipment consists of replacing such part or component
20 part of mechanical equipment in need of repair with the
21 identical part or component part, the registrar shall take
22 disciplinary action against the contractor's license in
23 accordance with this chapter.

24 For the purpose of this section, there shall be a
25 rebuttable presumption affecting the burden of proof
26 that construction performed without a permit is a willful
27 and deliberate violation.

28 SEC. 8. Section 7091 of the Business and Professions
29 Code is amended to read:

30 7091. (a) A complaint against a licensee alleging
31 commission of any patent acts or omissions that may be
32 grounds for legal action shall be filed in writing with the
33 registrar within four years after the act or omission
34 alleged as the ground for the disciplinary action. An
35 accusation or citation against a licensee shall be filed
36 within four years after the patent act or omission alleged
37 as the ground for disciplinary action or within 18 months
38 from the date of the filing of the complaint with the
39 registrar, whichever is later, except that with respect to
40 an accusation alleging a violation of Section 7112, the

1 accusation may be filed within two years after the
2 discovery by the registrar or by the board of the alleged
3 facts constituting the fraud or misrepresentation
4 prohibited by the section.

5 (b) A complaint against a licensee alleging
6 commission of any latent acts or omissions that may be
7 grounds for legal action pursuant to subdivision (a) of
8 Section 7109 regarding structural defects, as defined by
9 regulation, shall be filed in writing with the registrar
10 within 10 years after the act or omission alleged as the
11 ground for the disciplinary action. An accusation and
12 citation against a licensee shall be filed within 10 years
13 after the latent act or omission alleged as the ground for
14 disciplinary action or within 18 months from the date of
15 the filing of the complaint with the registrar, whichever
16 is later, except that with respect to an accusation alleging
17 a violation of Section 7112, the accusation may be filed
18 within two years after the discovery by the registrar or by
19 the board of the alleged facts constituting the fraud or
20 misrepresentation prohibited by Section 7112. As used in
21 this section “latent act or omission” means an act or
22 omission that is not apparent by reasonable inspection.

23 (c) An accusation regarding an alleged breach of an
24 express, written warranty for a period in excess of the
25 time periods specified in subdivisions (a) and (b) issued
26 by the contractor shall be filed within the duration of that
27 warranty.

28 (d) The proceedings under this article shall be
29 conducted in accordance with the provisions of Chapter
30 5 (commencing with Section 11500) of Part 1 of Division
31 3 of Title 2 of the Government Code, and the registrar
32 shall have all the powers granted therein.

33 (e) Nothing in this section shall be construed to affect
34 the liability of a surety or the period of limitations
35 prescribed by law for the commencement of actions
36 against a surety or cash deposit.

37 (f) The board shall adopt regulations to define the
38 term “structural defect” for purposes of this section by
39 December 31, 1995.



(g) Nothing in this section shall be construed to supersede, amend, or otherwise modify the terms and conditions of a California Home Construction Warranty issued pursuant to Chapter 4 (commencing with Section 17800) of Part 3 or Division 7 or the complaint, claims, and dispute resolution procedures provided for therein.

SEC. 9. Section 7111 of the Business and Professions Code is amended to read:

7111. (a) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all of his or her transactions as a contractor, including records relating to home construction warranties issued by the contractor, and failure to have those records available for inspection by the registrar or his or her duly authorized representative for a period of not less than five years after completion of any construction project or operation to which the records refer, or refusal by a licensee to comply with a written request of the registrar to make the records available for inspection constitutes a cause for disciplinary action.

(b) Failure of a licensee, applicant, or registrant subject to the provisions of this chapter, who without lawful excuse, delays, obstructs, or refuses to comply with a written request of the registrar or designee for information or records, to provide that information or make available those records, when the information or records are required in the attempt to discharge any duty of the registrar, constitutes a cause for disciplinary action.

SEC. 10. Chapter 4 (commencing with Section 17800) is added to Part 3 of Division 7 of the Business and Professions Code, to read:

1 CHAPTER 4. CALIFORNIA HOMEBUYER PROTECTION AND
2 QUALITY CONSTRUCTION ACT OF ~~2000~~ 2001

3
4 Article 1. General Provisions
5

6 17800. This chapter shall be known and may be cited
7 as the California Homebuyer Protection and Quality
8 Construction Act of ~~2000~~ 2001.

9 17801. (a) The Legislature finds and declares all of
10 the following:

11 (1) California has a statewide home building crisis.

12 (2) Nationally, most of the least affordable housing
13 markets are in California.

14 (3) The median price of homes in some California
15 counties exceeds three hundred thousand dollars
16 (\$300,000).

17 (4) By 2003 only 20 percent of the households in Los
18 Angeles County will be able to afford a median priced
19 home in that county.

20 (5) Multifamily housing, including condominiums and
21 townhouses, has traditionally been the entry level type of
22 housing designed for single people, young families, and
23 senior citizens.

24 ~~(6) Despite the tremendous need for condominiums~~
25 ~~and townhouses, the construction of this type of housing~~
26 ~~has all but halted because of the threat of construction~~
27 ~~defect litigation and the costs associated with it.~~

28 ~~(7) The great expense of construction defect litigation,~~
29 ~~and the high probability of condominium and townhouse~~
30 ~~developments being subject to construction defect~~
31 ~~litigation, has caused many homebuilders to abandon~~
32 ~~further development of condominiums and townhouses.~~

33 ~~(8) Californians need affordable homes that~~
34 ~~incorporate high quality construction, and they want to~~
35 ~~buy from homebuilders who are able to stand behind~~
36 ~~their workmanship.~~

37 (b) The Legislature further finds and declares that
38 there is a substantial need for a highly effective
39 state-sanctioned 10-year new home warranty program to

1 provide both a process for resolving claims and a
2 mechanism to ensure quality design and construction.

3 17802. The purpose of this chapter is to do all of the
4 following:

5 (a) Promote the construction of high quality,
6 affordable, residential housing units by California
7 homebuilders.

8 (b) Induce California homebuilders to improve the
9 training of homebuilding craftsmen to better assure the
10 construction of high quality, affordable, residential
11 housing throughout California.

12 (c) Inspire consumer confidence by establishing state
13 standards for residential home warranties offered by
14 homebuilders throughout California that promise high
15 quality workmanship free from construction defects.

16 (d) Focus consumer awareness on home warranty
17 terms by requiring, prior to purchase, adequate
18 disclosure of the rights and obligations of both the builder
19 and owners of homes warranted under this chapter,
20 including information about the claim resolution process
21 if a construction defect occurs.

22 (e) Ensure that participating homebuilders provide
23 sufficient financial resources to back their warranty, or
24 obtain adequate insurance from a licensed insurance
25 company to guaranty that home warranties will be
26 honored.

27 (f) Encourage prompt and fair resolution of
28 construction defect claims by homeowners through the
29 use of consumer friendly claims processing procedures.

30 (g) Enhance consumer confidence in purchasing
31 existing homes, by enabling warranties to run with the
32 title of the land throughout the warranty, for a period of
33 not less than 10 years.

34 (h) Protect subsequent purchasers of homes
35 warranted pursuant to this chapter, by requiring a seller
36 to adequately disclose the terms of home warranty
37 coverage.

38 (i) Build consumer trust in the value of the home
39 warranties issued under this chapter by providing

1 effective and consistent state oversight of home warranty
2 administration for the protection of homeowners.

3 (j) Educate homeowners and potential buyers about
4 home warranties issued under this chapter by creating
5 clear and concise informational materials.

6 17803. This chapter applies to homebuyer warranties
7 which meet the requirements of this chapter, and which
8 are offered by participating homebuilders to purchasers
9 of new residential homes.

10 17804. Nothing in this act shall be construed to
11 require a licensed contractor to offer homebuyer
12 warranties as a requirement of his or her licensure.

13 17805. The requirements and standards set forth in
14 this chapter are applicable only to homebuyer warranties
15 issued by participating homebuilders pursuant to this
16 chapter.

17 17806. As used in this chapter, the following
18 definitions apply:

19 (a) “Board” means the Contractors’ State License
20 Board.

21 (b) “California Home Construction Warranty,”
22 “home construction warranty,” and “warranty,” unless
23 otherwise specified, mean a warranty offered by a
24 participating homebuilder pursuant to this chapter.

25 (c) “Construction defect” means a defect in design,
26 materials, or workmanship that meets all of the following:

27 (1) Results from an act or omission of the builder, or of
28 an architect, engineer, subcontractor, or some other
29 agent, who is responsible for design, specifications,
30 surveying, planning, supervision, or observation of
31 construction or construction of the residential
32 improvements, and who is working for the builder as an
33 employee or pursuant to contract.

34 (2) Occurs during the original construction of the
35 improvement or in connection with the warranty repair
36 work, *and which, in the case of a common interest*
37 *development, includes construction or repair work in all*
38 *common areas.*

39 (3) Renders the improvement or some part of it not
40 reasonably fit for its intended purpose.

(4) Materially affects one or more of the following:

(A) Building site work, including, but not limited to, subsurface investigation, earthwork, protective drainage systems for slopes, and landscape irrigation systems.

(B) Substructure, including, but not limited to, concrete slabs, retaining walls, foundations, and basements, including waterproofing and drainage.

(C) Building shell, including, but not limited to, floors and floor coverings, walls and wall coverings, including stucco and siding, windows, doors, roof and roof coverings, including eaves, and building interior elements, including, but not limited to, interior partitions, framing, interior doors, stairs and stair cases, drywall and drywall finish, fire resistive assemblies and smoke barriers, and sound control systems.

(D) Building services and exterior components, including, but not limited to, chimneys and flues, decks and patios, plumbing systems and plumbing fixtures, sanitary waste systems, rain water gutters, downspouts and drain systems, heating ventilation and air conditioning systems, electrical systems, fire protection and fire suppression systems, telephone, television and computer wiring systems and security systems installed by the builder.

(d) “Homeowner” means a “purchaser of a new residential home,” “subsequent purchaser,” or other holder of title of a home that is the subject of a home construction warranty issued pursuant to this chapter.

(e) “Licensed insurance company” means an insurance company authorized by the California Department of Insurance to transact miscellaneous insurance, as defined in Section 120 of the California Insurance Code with a rating of at least “AA” or the equivalent from a standard rating agency recognized by the Contractors’ State License Board, or a nonadmitted insurer declared eligible for placement and included on the export list established and maintained by the Insurance Commissioner pursuant to Section 1763.1 of the Insurance Code with a rating of at least “AA” or the

1 *equivalent from a standard rating agency recognized by*
2 *the Contractors' State License Board.*

3 (f) "Licensed surety insurance company" means an
4 insurance company authorized by the California
5 Department of Insurance to transact surety insurance, as
6 defined in Section 105 of the California Insurance Code.

7 (g) "Participating homebuilder" means a contractor,
8 *partnership, corporation, limited liability company, or*
9 *other entity* who has been certified by the Contractors'
10 State License Board pursuant to Section 17815 to issue
11 California Home Construction Warranties.

12 (h) "Purchaser of a new residential home" means the
13 holder of the original title to a newly constructed
14 residential home, including a home that is part of a
15 common interest development, where the purchaser
16 secured title on or after January 1, ~~2000~~ 2001.

17 (i) "Subsequent purchaser" means a subsequent
18 holder of title to a residential home that is subject to a
19 home construction warranty issued pursuant to this
20 chapter.

21 (j) "Warranty administrator" means a licensed
22 insurance company or a qualified third party claims
23 administrator that has contracted with a participating
24 homebuilder to administer and process complaints and
25 claims under a home construction warranty, or an
26 employee of the participating homebuilder whose
27 responsibilities include the administration and processing
28 of complaints and claims under the warranty.

29

30 Article 2. Warranty Administration and Qualification

31

32 17810. The board shall administer and enforce this
33 chapter as it applies to licensed contractors who apply to
34 be certified as participating homebuilders under this
35 chapter and who offer home construction warranties
36 pursuant to this chapter.

37 17811. The board shall establish and administer a
38 certification process for licensed contractors who make
39 application to be certified as participating homebuilders
40 pursuant to this chapter.



1 17812. The board shall promulgate regulations
2 establishing the amount and nature of financial security
3 to be required under this chapter.

4 17815. For a licensed contractor to be a participating
5 homebuilder, the contractor has to be certified by the
6 board to issue a California Home Construction Warranty.
7 To be certified, the contractor shall meet all of the
8 following requirements and provide proof of compliance
9 therewith on a form prescribed by the board:

10 (a) Hold and maintain a valid license as a general
11 building contractor, issued by the board.

12 (b) Provide proof of financial security to guarantee
13 the contractor's obligations under home construction
14 warranties issued pursuant to this chapter. For purposes
15 of this chapter, "proof of financial security" may include
16 one or more of the following:

17 (1) An insurance policy providing coverage for the
18 warranty obligations assumed by the contractor, issued by
19 a licensed insurance company.

20 (2) A surety bond guaranteeing the warranty
21 obligations of the contractor, issued by an authorized
22 surety.

23 (3) An alternative funding plan, including a plan that
24 requires the contractor to retain all or a portion of the
25 financial obligations arising under home construction
26 warranties, that guarantees the financial obligations of
27 the contractor under home construction warranties.

28 (c) Develop and implement a quality assurance
29 program that meets the requirements of Section 17840.

30 (d) File a sample copy of the home construction
31 warranty that the contractor intends on offering. The
32 home construction warranty shall meet the requirements
33 of Article 3 (commencing with Section 17825).

34 (e) Demonstrate proof of administrative capacity to
35 administer and process complaints and claims during the
36 effective dates of all warranties issued pursuant to this
37 chapter.

38 (1) A contractor may contract with a warranty
39 administrator or licensed insurance company to

1 administer and process complaints and claims under
2 warranties issued pursuant to this chapter.

3 (2) Complaint and claims-handling procedures
4 adopted by the warranty administrator, licensed
5 insurance company, or qualified employee of the
6 contractor shall meet the requirements of Article 3
7 (commencing with Section 17825).

8 (f) Provide a summary of the alternative dispute
9 resolution process to be used under the warranty.

10 17816. Proof of compliance with all of the
11 requirements of this section shall be filed with the board
12 before a contractor may be certified to offer and issue
13 warranties under this chapter. A contractor is deemed to
14 have met the requirements of this chapter if the board has
15 not certified or refused certification of the contractor's
16 application within 30 days of the date all required
17 documents have been filed with the board.

18 17817. A contractor, upon being issued a certificate to
19 issue California Home Construction Warranties by the
20 board pursuant to this section, shall file annually with the
21 board, on a form prescribed by the board, information
22 indicating any modifications to the contractor's original
23 application for certification as approved by the board.
24 The board shall renew the contractor's certification
25 unless it finds, upon review of the contractor's annual
26 renewal filing, that the contractor no longer meets the
27 requirements of this section. Upon a finding by the board
28 that the contractor no longer meets the requirements of
29 this section, the contractor shall have 30 days within
30 which to provide proof that all of the requirements of this
31 section have been met. If the contractor is not able to
32 provide the required proof to the board, the board shall
33 suspend or revoke the contractor's certification to issue
34 California Home Construction Warranties until the
35 contractor provides proof of meeting the requirements of
36 this section. Any action taken by the board to suspend or
37 revoke the certification of a contractor to issue California
38 Home Construction Warranties under this section shall
39 not affect the obligations of the contractor under home
40 construction warranties issued by the contractor, as a

1 participating homebuilder prior to the date of the
2 suspension or revocation.

3 17820. The following fair marketing standards apply
4 to participating homebuilders who offer home
5 construction warranties pursuant to this chapter:

6 (a) Only a warranty that meets the minimum
7 standards of Article 3 (commencing with Section 17825)
8 may be advertised and marketed as a California Home
9 Construction Warranty.

10 (1) A warranty offered in connection with the sale of
11 residential housing that does not meet the requirements
12 of this chapter and purports to warrant the construction
13 of the house shall not be represented as meeting the
14 requirements of this chapter to prospective homebuyers,
15 nor shall the warranty, the warranty administrator, a
16 licensed contractor or other person misrepresent or
17 falsely advertise the warranty as meeting the
18 requirements of the California Homebuyer Protection
19 and Quality Construction Act of ~~2000~~ 2001.

20 (2) Nothing in this section shall be construed to
21 prohibit a home protection company, licensed pursuant
22 to Chapter 1 (commencing with Section 12740) of Part 7
23 of Division 2 of the California Insurance Code, from
24 offering a home protection contract in connection with
25 the sale of residential housing, as long as the home
26 protection contract clearly discloses that the contract is
27 not being offered pursuant to the California Homebuyer
28 Protection and Quality Construction Act of ~~2000~~ 2001.

29 (b) A participating homebuilder shall disclose to
30 purchasers of new residential homes, at the time of
31 acceptance of the real estate purchase contract, that a
32 California Home Construction Warranty applies to the
33 property.

34 (1) The participating homebuilder shall reference the
35 existence of a California Home Construction Warranty in
36 the deed of sale for the property at issue, at the time of the
37 filing and registration of the deed with the county.

38 (2) A copy of the warranty shall be provided to the
39 purchaser at the time of acceptance of the real estate
40 purchase contract.

1 (3) The warranty shall clearly state the effective date
2 that coverage begins and ceases under the warranty. The
3 warranty shall be in effect a minimum of 10 years, and
4 shall begin on the date of substantial completion of the
5 residential home to which it applies.

6 (4) If a home construction warranty provides for
7 alternative dispute resolution to resolve disputes under
8 the warranty, this shall be clearly disclosed to the
9 purchaser no later than at the time of acceptance of the
10 real estate purchase contract.

11 (5) During the term of the warranty, if the purchaser
12 of a new home subject to a California Home Construction
13 Warranty transfers title to the property to a subsequent
14 purchaser, the original purchaser of the home shall
15 provide the disclosure required by this section to the
16 subsequent purchaser at the time of acceptance of the
17 real estate purchase contract.

18 (6) For new residential homes to which this chapter
19 applies that are included within a subdivision subject to
20 the California Subdivided Lands Act, and for which a
21 public report is required to be filed pursuant to that act,
22 the developer of the subdivision shall include a statement
23 in the public report indicating whether or not the new
24 residential homes within the division are subject to a
25 home construction warranty issued pursuant to this
26 chapter.

27 (c) A participating homebuilder, a warranty
28 administrator, or a sales, marketing, or other
29 representative of the homebuilder shall not knowingly
30 misrepresent the terms and conditions of a warranty
31 offered pursuant to this chapter.

32 33 Article 3. California Home Construction Warranty 34

35 17825. A California Home Construction Warranty
36 issued, sold, or offered for sale by a participating
37 homebuilder pursuant to this chapter shall be written in
38 clear, understandable language and the entire contract
39 shall be printed or typed in easy to read 10-point or larger
40 type.

1 17826. A California Home Construction Warranty
2 issued, sold, or offered for sale by a participating
3 homebuilder pursuant to this chapter shall include the
4 following:

5 (a) The coverage provided under the warranty and
6 any exclusions or restrictions to that coverage.

7 (b) The rights and obligations of the participating
8 homebuilder and the homeowner under the warranty.

9 (c) The process for filing of a complaint or a claim
10 under the warranty, including an emergency complaint,
11 and any filing fees or deductibles that may apply thereto.

12 (d) The name, address, and telephone number of the
13 warranty administrator, and the emergency telephone
14 number for emergency complaint.

15 (e) If the participating homebuilder has contracted
16 with a licensed insurance company or licensed surety
17 insurance company to provide insurance coverage for the
18 warranty obligations assumed by the homebuilder, the
19 home warranty shall provide the name, address, and
20 telephone number of the licensed insurance company
21 and shall conspicuously state that upon failure of the
22 participating homebuilder to perform under the
23 contract, the homeowner is entitled to make a claim
24 directly against the insurance company and the process
25 for making that claim.

26 (f) If the participating homebuilder has not
27 contracted with a licensed insurance company or
28 licensed surety insurance company to provide insurance
29 coverage for the warranty obligations assumed by the
30 homebuilder, the home buyer warranty shall
31 conspicuously state that upon the failure of the
32 homebuilder to perform under the contract, the
33 homeowner is entitled to make a claim directly against
34 the guarantors of the homebuilder's warranty obligations
35 and the process for making the claim.

36 (g) The circumstances under which the homeowner is
37 required to obtain prior approval from the participating
38 homebuilder to correct a covered defect, the procedure
39 for obtaining prior approval to correct a covered defect,
40 and the process for making an emergency complaint.

1 (h) The terms, restrictions, and conditions covering
2 the transferability of the California Home Construction
3 Warranty, and a conspicuous statement indicating that
4 the warranty automatically transfers with title to
5 subsequent purchasers during the term of the warranty
6 and the homeowner may be required to disclose the
7 existence of the warranty to subsequent purchasers.

8 (i) A conspicuous statement that, subject to the terms
9 and conditions of the warranty, the warranty may not be
10 cancelled or otherwise terminated by either the
11 homeowner or the participating homebuilder.

12 (j) A conspicuous statement indicating the
13 circumstances under which the warranty may be voided
14 by either party.

15 (k) A conspicuous statement indicating if the
16 warranty provides for or excludes consequential
17 damages.

18 (l) The process for the complaint and inquiry process
19 and for the claim process for mediation or resolution of
20 complaints, claims, controversies, and disputes arising
21 under the warranty. The warranty may not establish a
22 complaint and inquiry process that delays the written
23 notice required by subdivision (c) of Section 17830 more
24 than 30 days from the date the participating homebuilder
25 receives an initial notice of complaint or inquiry. This
26 paragraph does not prohibit an extension of time
27 pursuant to subdivision (c) of Section 17830.

28 (m) If the home construction warranty provides for
29 alternative dispute resolution, this must be conspicuously
30 stated in the warranty agreement.

31 (n) If the home construction warranty provides for
32 alternative dispute resolution of any and all complaints,
33 claims, disputes, and controversies arising from the
34 construction of the residential home of the homeowner,
35 including any complaints, claims, disputes, and
36 controversies being made directly against a licensed
37 insurance company that has contracted with the
38 participating homebuilder to cover the homebuilder's
39 warranty obligations, this shall be conspicuously stated in
40 the warranty agreement.

1 17827. (a) The home construction warranty
2 coverage language shall conspicuously state that the
3 warranty provides coverage for construction defects as
4 defined in this chapter, for a minimum period of 10 years
5 from the date of substantial completion of the
6 construction of the residential home to which the
7 warranty applies, and that during the minimum 10-year
8 coverage period of the warranty, upon proper notice
9 from the homeowner, the participating homebuilder
10 shall be responsible for the correction of any construction
11 defect covered by the warranty.

12 (b) For purposes of this section, the phrase “correction
13 of any construction defect” shall include repair,
14 replacement, or payment of reasonable costs to repair or
15 replace, pursuant to existing construction codes and
16 standards of construction practice in effect at the time of
17 original construction, or at the builder’s option, either of
18 the following:

19 (1) Rebuild the structure in accordance with the
20 original plans and specifications *and in accordance with*
21 *any modifications required as a condition of obtaining a*
22 *building permit.*

23 (2) Pay the reasonable value of the property plus
24 relocation costs.

25 (c) The choice between repair, replacement, or
26 payment is the builder’s, subject to the dispute resolution
27 provisions of the warranty.

28 (d) The builder shall be responsible for actual
29 reasonable cost of alternative shelter expenses during the
30 period of repairs.

31 17828. (a) During the term of a home construction
32 warranty, the warranty shall be transferred to subsequent
33 purchasers of the home, at the time legal title to the home
34 is transferred. The transfer of the warranty shall neither
35 extend nor reduce the original termination date of the
36 warranty.

37 (b) The participating homebuilder may not change
38 the terms and conditions of the home construction
39 warranty during the term of the warranty.

1 (c) Subject to terms and conditions of the warranty, a
2 California Home Construction Warranty, upon becoming
3 effective, may not be canceled by either the homeowner
4 or the participating homebuilder during the term of the
5 warranty.

6 17829. Nothing in this chapter shall be construed to
7 discourage or prohibit participating homebuilders from
8 offering home construction warranties that provide
9 coverage for construction defects for a period of longer
10 than 10 years or that provide for differing coverage
11 periods for different components of the home, provided
12 that the coverage provided meets the minimum
13 requirements of this section.

14 17830. The following fair complaint and
15 claims-handling standards shall apply to participating
16 homebuilders, warranty administrators, and licensed
17 insurance companies under contract with participating
18 homebuilders to administer and process complaints and
19 claims arising from warranties issued pursuant to this
20 chapter:

21 (a) A homebuilder may contract with a warranty
22 administrator or licensed insurance company to
23 administer and process complaints and claims under
24 home construction warranties issued pursuant to this
25 chapter.

26 (1) If a participating homebuilder contracts with a
27 warranty administrator or licensed insurance company to
28 administer and process complaints and claims under a
29 home construction warranty, the warranty shall
30 conspicuously state the identity, address, and telephone
31 number of the warranty administrator or insurance
32 company for purposes of the noticing of complaints,
33 construction defects, or other construction deficiencies
34 arising from construction of a new residential home that
35 is subject to the warranty.

36 (2) If the participating homebuilder replaces a
37 warranty administrator who has been processing
38 complaints and claims under a warranty subject to this
39 chapter, the participating homebuilder shall
40 immediately notify the homeowner of the identity,

1 address, and telephone number of the new warranty
2 administrator for the noticing of complaints and claims,
3 the participating homebuilder shall notify the
4 Contractors' State License Board within 30 days of the
5 identity of the new warranty administrator.

6 (b) The participating homebuilder shall establish and
7 maintain, or contract with a warranty administrator or
8 licensed insurance company to establish and maintain, a
9 process for responding to complaints and inquiries arising
10 under the California Home Construction Warranty.

11 (1) A participating homebuilder or warranty
12 administrator, or licensed insurance company under
13 contract with the homebuilder to administer and process
14 complaints and claims, shall acknowledge receipt of an
15 initial nonemergency complaint or inquiry within 15 days
16 of receipt.

17 (2) Where necessary for resolution of the complaint or
18 inquiry, the participating homebuilder and homeowner
19 shall schedule a mutually agreeable time for the
20 inspection of the conditions giving rise to the complaint
21 or inquiry.

22 (3) Upon completion of the inspection of the condition
23 giving rise to the complaint or inquiry, and no later than
24 30 days from receipt of the complaint or inquiry, or 45
25 days if the complaint or inquiry is from a homeowners'
26 association, unless an extension of this time period is
27 agreed to by the parties, the participating homebuilder
28 shall provide the homeowner with a written statement
29 indicating whether or not the condition giving rise to the
30 complaint or inquiry is covered under the warranty and
31 any corrective action the homebuilder intends to take
32 regarding the condition giving rise to the complaint or
33 inquiry.

34 (4) If the participating homebuilder determines that
35 the condition giving rise to the complaint or inquiry is not
36 covered under the warranty, the written statement
37 required by this subdivision shall include a description of
38 the process for filing a claim under the warranty.

39 (5) If the participating homebuilder determines that
40 the condition giving rise to the complaint or inquiry is

1 covered under the warranty, the written statement
2 required by this subdivision shall indicate the specific
3 action the builder will take to correct the condition and
4 the schedule for taking that corrective action.

5 (6) The homeowner shall comply with the complaint
6 and inquiry procedures provided in the warranty
7 including the inspection provided for in paragraph (2) of
8 subdivision (b) of Section 17830, before initiating the
9 claim process under the warranty. A participating
10 homebuilder and homeowner may mutually agree to
11 extend the complaint and inquiry process beyond the
12 time in the warranty.

13 (c) At any time in the complaint and inquiry process,
14 or during the claim process under the warranty, the
15 participating homebuilder and homeowner may
16 mutually agree to directly invoke the dispute resolution
17 procedures set forth in the warranty. If the dispute
18 resolution procedures are directly invoked, the parties
19 may mutually agree to either shorten or extend the
20 timelines for complaints and claims as set forth in this
21 subdivision, and all of the following shall apply:

22 (1) Upon receipt of a written notice of claim from the
23 homeowner under the warranty, the participating
24 homebuilder shall acknowledge receipt of the notice
25 within 15 days and make a good faith effort to meet with
26 the homeowner and inspect the basis for the claim.

27 (2) Upon inspection of the claim, and within 30 days of
28 the initial notice of claim, the participating homebuilder
29 shall provide the homeowner with a written statement
30 indicating whether or not the claim is covered under the
31 warranty and any corrective action the homebuilder
32 intends to take regarding the covered defect.

33 (3) If the participating homebuilder determines that
34 the claim is not covered under the warranty, the written
35 statement required by this subdivision shall include a
36 statement indicating that the claim is not covered and
37 shall include a description of the process for resolution of
38 disputes under the warranty.

39 (4) If the participating homebuilder determines that
40 the claim is covered under the warranty, the written

statement required by this subdivision shall indicate the specific action the builder will take to correct the defect and the schedule for taking that corrective action.

(d) If the California Home Construction Warranty provides for alternative dispute resolution to resolve disputes under the warranty, the process and procedures for alternative dispute resolution shall comply with the requirements of Section 17835.

17835. (a) A California Home Construction Warranty may include a provision to submit all complaints, claims, disputes, and controversies relating to construction defects, construction deficiencies, or any and all issues arising from the construction of the new residential home, regardless of the nature of the claim, the injury or damage sustained or the type of remedy sought, to ~~mediation~~ *a dispute resolution conference* with subsequent referral to judicial arbitration pursuant to Section 1141.12 of the Code of Civil Procedure as a means of alternative dispute resolution.

(b) A home construction warranty may include a provision to submit any and all disputes or controversies regarding scope of coverage under the warranty or breach of the warranty to ~~mediation~~ *a dispute resolution conference* with subsequent referral to judicial arbitration pursuant to Section 1141.12 of the Code of Civil Procedure.

(c) A home construction warranty may include a provision to submit any and all disputes or controversies directly against a warranty administrator or licensed insurance company under contract with a participating homebuilder to ~~mediation~~ *a dispute resolution conference* with subsequent referral to judicial arbitration pursuant to Section 1141.12 of the Code of Civil Procedure.

(1) A home construction warranty which includes a provision for ~~mediation~~ *a dispute resolution conference* with subsequent referral to judicial arbitration pursuant to Section 1141.12 of the Code of Civil Procedure shall conspicuously state the following procedures for conducting the ~~mediation~~ *dispute resolution conference*:

1 (A) The process and time periods for delivery of
2 written notice from one party to the agreement to the
3 other, ~~initiates the mediation process and specifies for~~
4 *initiating the dispute resolution conference, and for*
5 *specifying* the nature of the dispute, the amount
6 involved, and the remedy sought.

7 (B) The process for responding to a written notice
8 initiating ~~mediation~~ *a dispute resolution conference*.

9 (C) If the agreement provides for an expedited
10 ~~mediation~~ *dispute resolution* process for certain claims
11 based upon the amount in controversy, the type of claim
12 in dispute, or any other criteria, and the rules and process
13 for that expedited ~~mediation~~ *dispute resolution* process.

14 (D) The process and time periods for any ~~mediation~~
15 *dispute resolution* conferences and requests for
16 information.

17 (E) The process for appointment of a neutral and
18 impartial ~~mediator~~. ~~The mediator~~ *facilitator*. *The*
19 *facilitator* shall be appointed within a specified period of
20 time, which may not be more than 60 days from the
21 warranty administrator's receipt of a written request
22 from a party to ~~mediate~~ *resolve* the claim or dispute.

23 (F) The venue of the ~~mediation~~ *dispute resolution*
24 proceedings which shall be the county where the home
25 is located unless the parties agree in writing to some other
26 location.

27 (G) The responsibility of the parties for the fees and
28 expenses of the ~~mediation~~ *dispute resolution*
29 proceedings, provided that the homebuilder shall be
30 responsible for and shall reimburse the homeowner for
31 the cost of the initial ~~mediation~~ *dispute resolution*
32 *conference*.

33 (2) A home construction warranty subject to this
34 subdivision shall also conspicuously state that the process
35 for conducting judicial arbitration is as contained in
36 Chapter 2.5 (commencing with Section 1141.10) of Title
37 3 of Part 3 of the Code of Civil Procedure.

38 (e) The parties to the home construction warranty;
39 ~~and any alternative dispute resolution agreement~~
40 ~~contained therein~~, shall have the right to be represented

1 by an attorney at any proceeding, hearing, or other
2 meeting between the parties to discuss any dispute
3 arising under the warranty.

4 (f) Any agreement to ~~mediate~~ *resolve* disputes arising
5 under a California Home Construction Warranty, and the
6 provision setting forth the rules and procedures to be
7 used in the dispute resolution process, as required by this
8 section, shall be filed with the board by the participating
9 homebuilder.

10 (g) If during the process authorized by this section, a
11 homeowner or homeowners' association unreasonably
12 rejects an offer made by the builder, the homeowner, or
13 homeowners' association may not recover an amount in
14 excess of the reasonable cost of the repairs that are
15 necessary to correct the construction defect and that are
16 covered under the warranty and may recover only the
17 amount of reasonable and necessary attorney's fees and
18 costs incurred before the offer was rejected.

19 (h) If a participating builder fails to make a reasonable
20 offer during the process authorized by this section, or fails
21 to complete, in a good and workmanlike manner, the
22 repairs specified in an accepted offer made pursuant to
23 that process, the limitations on damages and remedies
24 provided for in this chapter shall not apply.

25 (i) The arbitrator to which the dispute is referred after
26 ~~mediation~~ *a dispute resolution conference* shall
27 determine the reasonableness of a rejection of an offer of
28 settlement made under this section and the
29 reasonableness of an offer made under this section.

30 (j) Notwithstanding any other provision of this
31 chapter, a participating builder who receives written
32 notice of a construction defect covered by the warranty
33 and creating an imminent threat to the health or safety
34 of the inhabitants of the house shall take reasonable steps
35 to correct the defect as soon as practicable. If the
36 participating builder fails to correct the defect in a
37 reasonable time, the homeowner or homeowners'
38 association may have the defect corrected and may
39 recover from the participating builder the reasonable
40 cost of repairs, plus attorney's fees and costs in addition

1 to any other damages recoverable under any law not
2 inconsistent with the provisions of this chapter.

3 *(k) Except as provided in subdivision (i), a dispute*
4 *resolution conference initiated pursuant to this chapter*
5 *shall be conducted in accordance with Chapter 2*
6 *(commencing with Section 1115) of Division 9 of the*
7 *Evidence Code.*

8 17840. A participating homebuilder who offers a
9 California Home Construction Warranty pursuant to this
10 chapter shall develop and maintain a quality assurance
11 program which has the purpose that the homes built meet
12 high quality standards, and shall include all of the
13 following:

14 (a) A process for the inspection of workmanship at
15 appropriate stages of the construction process, with a
16 management and oversight process that seeks to
17 eliminate the occurrence of construction defects in all of
18 the following areas:

- 19 (1) Structural.
- 20 (2) Exterior.
- 21 (3) Interior.
- 22 (4) Site preparation.
- 23 (5) Foundations.
- 24 (6) Installation of doors and windows.
- 25 (7) Roofing.
- 26 (8) Plumbing.
- 27 (9) Electrical.
- 28 (10) Heating, air-conditioning, insulation, and
29 ventilation systems.

30 (b) A program for the hiring, training, and continuing
31 education for employees of the participating
32 homebuilder who participate in the actual construction
33 or inspection of residential housing.

34 (c) A program for contracting with independent
35 contractors and subcontractors who participate in the
36 actual construction or inspection of residential housing:

- 37 (1) The participating homebuilder shall enter into
38 written contracts with all independent contractors and
39 subcontractors for the completion of the work being
40 contracted for.



1 (2) The participating homebuilder shall contact the
2 Contractors' State License Board regarding the licensure
3 and bonding of all independent contractors and
4 subcontractors who work on the construction site and are
5 under contract.

6 (3) The participating homebuilder may include
7 performance incentives and targets for quality
8 construction in contracts with independent contractors
9 and subcontractors.

10 (4) The participating homebuilder shall disclose in its
11 certification filing made pursuant to Section 17815 any
12 training or continuing education programs applicable to
13 independent contractors and subcontractors.

14 (d) A participating homebuilder may contract with a
15 warranty administrator, licensed insurance company, or
16 third-party inspection service to meet the requirements
17 of this section.

18 *17841. When a California Home Construction*
19 *Warranty covers a common interest development, a*
20 *participating home builder shall provide to the*
21 *homeowners' association an approved set of original plans*
22 *and specifications, as-built drawings, working drawings,*
23 *and change orders.*

24 17845. If a homeowner elects by contract to purchase
25 a home subject to a warranty that meets the minimum
26 standards for California Home Construction Warranties,
27 the contractual provisions of that warranty shall be
28 deemed to be the exclusive election of recourse by that
29 homeowner and the participating homebuilder for the
30 claims covered by the warranty. The parties to the
31 warranty contract are deemed to have waived any tort
32 remedies, including negligence, strict liability, implied
33 warranties, or any other common law remedy other than
34 for breach of warranty contract and the provisions
35 therein. To the extent that a home construction warranty
36 does not contain coverage for certain alleged defects,
37 there is no election of recourse. The homeowner who is
38 party to the warranty contract, should the warranty so
39 provide, waives any noncontractual claims against any
40 design, professional, or trade contractors covered by the

1 warranty who performed professional services or works
2 of improvement on the subject property. This section
3 does not preclude or limit any right of action for bodily
4 injury, wrongful death, or fraud and intentional
5 misrepresentation.

6 SEC. 11. Section 1351 of the Civil Code is amended to
7 read:

8 1351. As used in this title, the following terms have the
9 following meanings:

10 (a) “Association” means a nonprofit corporation or
11 unincorporated association created for the purpose of
12 managing a common interest development.

13 (b) “California Home Construction Warranty” means
14 a warranty issued by a participating homebuilder
15 pursuant to Chapter 4 (commencing with Section 17800)
16 of Part 3 of Division 7 of the Business and Professions
17 Code.

18 (c) “Common area” means the entire common
19 interest development except the separate interests
20 therein. The estate in the common area may be a fee, a
21 life estate, an estate for years, or any combination of the
22 foregoing. However, the common area for a planned
23 development specified in paragraph (2) of subdivision
24 (k) may consist of mutual or reciprocal easement rights
25 appurtenant to the separate interests.

26 (d) “Common interest development” means any of
27 the following:

28 (1) A community apartment project.

29 (2) A condominium project.

30 (3) A planned development.

31 (4) A stock cooperative.

32 (e) “Community apartment project” means a
33 development in which an undivided interest in land is
34 coupled with the right of exclusive occupancy of any
35 apartment located thereon.

36 (f) “Condominium plan” means a plan consisting of
37 (1) a description or survey map of a condominium
38 project, which shall refer to or show monumentation on
39 the ground, (2) a three-dimensional description of a
40 condominium project, one or more dimensions of which



1 may extend for an indefinite distance upwards or
2 downwards, in sufficient detail to identify the common
3 areas and each separate interest, and (3) a certificate
4 consenting to the recordation of the condominium plan
5 pursuant to this title signed and acknowledged by the
6 record owner of fee title to that property included in the
7 condominium project. In the case of a condominium
8 project which will terminate upon the termination of an
9 estate for years, the certificate shall be signed and
10 acknowledged by all lessors and lessees of the estate for
11 years and, in the case of a condominium project subject
12 to a life estate, the certificate shall be signed and
13 acknowledged by all life tenants and remainder interests.
14 The certificate shall also be signed and acknowledged by
15 either the trustee or the beneficiary of each recorded
16 deed of trust, and the mortgagee of each recorded
17 mortgage encumbering the property. Owners of mineral
18 rights, easements, rights-of-way, and other nonpossessory
19 interests do not need to sign the condominium plan. A
20 condominium plan may be amended or revoked by a
21 subsequently acknowledged recorded instrument
22 executed by all the persons whose signatures would be
23 required to record a condominium plan pursuant to this
24 subdivision.

25 (g) A “condominium project” means a development
26 consisting of condominiums. A condominium consists of
27 an undivided interest in common in a portion of real
28 property coupled with a separate interest in space called
29 a unit, the boundaries of which are described on a
30 recorded final map, parcel map, or condominium plan in
31 sufficient detail to locate all boundaries thereof. The area
32 within these boundaries may be filled with air, earth, or
33 water, or any combination thereof, and need not be
34 physically attached to land except by easements for
35 access and, if necessary, support. The description of the
36 unit may refer to (1) boundaries described in the
37 recorded final map, parcel map, or condominium plan,
38 (2) physical boundaries, either in existence, or to be
39 constructed, such as walls, floors, and ceilings of a
40 structure or any portion thereof, (3) an entire structure



1 containing one or more units, or (4) any combination
2 thereof. The portion or portions of the real property held
3 in undivided interest may be all of the real property,
4 except for the separate interests, or may include a
5 particular three-dimensional portion thereof, the
6 boundaries of which are described on a recorded final
7 map, parcel map, or condominium plan. The area within
8 these boundaries may be filled with air, earth, or water,
9 or any combination thereof, and need not be physically
10 attached to land except by easements for access and, if
11 necessary, support. An individual condominium within a
12 condominium project may include, in addition, a separate
13 interest in other portions of the real property.

14 (h) “Construction defect” means “construction
15 defect” as defined in subdivision (c) of Section 17806 of
16 the Business and Professions Code.

17 (i) “Declarant” means the person or group of persons
18 designated in the declaration as declarant, or if no
19 declarant is designated, the person or group of persons
20 who sign the original declaration or who succeed to
21 special rights, preferences, or privileges designated in the
22 declaration as belonging to the signator of the original
23 declaration.

24 (j) “Declaration” means the document, however
25 denominated, which contains the information required
26 by Section 1353.

27 (k) “Exclusive use common area” means a portion of
28 the common areas designated by the declaration for the
29 exclusive use of one or more, but fewer than all, of the
30 owners of the separate interests and which is or will be
31 appurtenant to the separate interest or interests.

32 (1) Unless the declaration otherwise provides, any
33 shutters, awnings, window boxes, doorsteps, stoops,
34 porches, balconies, patios, exterior doors, doorframes, and
35 hardware incident thereto, screens and windows or other
36 fixtures designed to serve a single separate interest, but
37 located outside the boundaries of the separate interest,
38 are exclusive use common areas allocated exclusively to
39 that separate interest.



(2) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(l) “Governing documents” means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, or a California Home Construction Warranty, which govern the operation of the common interest development or association.

(m) “Planned development” means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by the association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367.

(n) “Separate interest” has the following meanings:

(1) In a community apartment project, “separate interest” means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, “separate interest” means an individual unit, as specified in subdivision (f).

(3) In a planned development, “separate interest” means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, “separate interest” means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings,

1 windows, doors, and outlets located within the separate
2 interest are part of the separate interest and any other
3 portions of the walls, floors, or ceilings are part of the
4 common areas.

5 The estate in a separate interest may be a fee, a life
6 estate, an estate for years, or any combination of the
7 foregoing.

8 (o) “Stock cooperative” means a development in
9 which a corporation is formed or availed of primarily for
10 the purpose of holding title to, either in fee simple or for
11 a term of years, improved real property, and all or
12 substantially all of the shareholders of the corporation
13 receive a right of exclusive occupancy in a portion of the
14 real property, title to which is held by the corporation.
15 The owners’ interest in the corporation, whether
16 evidenced by a share of stock, a certificate of
17 membership, or otherwise, shall be deemed to be an
18 interest in a common interest development and a real
19 estate development for purposes of subdivision (f) of
20 Section 25100 of the Corporations Code.

21 A “stock cooperative” includes a limited equity housing
22 cooperative which is a stock cooperative that meets the
23 criteria of Section 33007.5 of the Health and Safety Code.

24 SEC. 12. Section 1354 of the Civil Code is amended to
25 read:

26 1354. (a) The covenants and restrictions in the
27 declaration, including a California Home Construction
28 Warranty, if applicable, shall be enforceable equitable
29 servitudes, unless unreasonable, and shall inure to the
30 benefit of and bind all owners of separate interests in the
31 development. Unless the declaration states otherwise,
32 these servitudes may be enforced by any owner of a
33 separate interest or by the association, or by both.

34 (b) Except where the terms and conditions of a
35 California Home Construction Warranty are applicable,
36 unless the applicable time limitation for commencing the
37 action would run within 120 days, prior to the filing of a
38 civil action by either an association or an owner or a
39 member of a common interest development solely for
40 declaratory relief or injunctive relief, or for declaratory

1 relief or injunctive relief in conjunction with a claim for
2 monetary damages, other than association assessments,
3 not in excess of five thousand dollars (\$5,000), related to
4 the enforcement of the governing documents, the parties
5 shall endeavor, as provided in this subdivision, to submit
6 their dispute to a form of alternative dispute resolution
7 such as mediation or arbitration. The form of alternative
8 dispute resolution chosen may be binding or nonbinding
9 at the option of the parties. Any party to a dispute may
10 initiate this process by serving on another party to the
11 dispute a Request for Resolution. The Request for
12 Resolution shall include (1) a brief description of the
13 dispute between the parties, (2) a request for alternative
14 dispute resolution, and (3) a notice that the party
15 receiving the Request for Resolution is required to
16 respond thereto within 30 days of receipt or it will be
17 deemed rejected. Service of the Request for Resolution
18 shall be in the same manner as prescribed for service in
19 a small claims action as provided in Section 116.340 of the
20 Code of Civil Procedure. Parties receiving a Request for
21 Resolution shall have 30 days following service of the
22 Request for Resolution to accept or reject alternative
23 dispute resolution and, if not accepted within the 30-day
24 period by a party, shall be deemed rejected by that party.
25 If alternative dispute resolution is accepted by the party
26 upon whom the Request for Resolution is served, the
27 alternative dispute resolution shall be completed within
28 90 days of receipt of the acceptance by the party initiating
29 the Request for Resolution, unless extended by written
30 stipulation signed by both parties. The costs of the
31 alternative dispute resolution shall be borne by the
32 parties.

33 (c) At the time of filing a civil action by either an
34 association or an owner or a member of a common
35 interest development solely for declaratory relief or
36 injunctive relief, or for declaratory relief or injunctive
37 relief in conjunction with a claim for monetary damages
38 not in excess of five thousand dollars (\$5,000), related to
39 the enforcement of the governing documents, the party
40 filing the action shall file with the complaint a certificate

1 stating that alternative dispute resolution has been
2 completed in compliance with subdivision (b). The
3 failure to file a certificate as required by subdivision (b)
4 shall be grounds for a demurrer pursuant to Section
5 430.10 of the Code of Civil Procedure or a motion to strike
6 pursuant to Section 435 of the Code of Civil Procedure
7 unless the filing party certifies in writing that one of the
8 other parties to the dispute refused alternative dispute
9 resolution prior to the filing of the complaint, that
10 preliminary or temporary injunctive relief is necessary,
11 or that alternative dispute resolution is not required by
12 subdivision (b), because the limitation period for
13 bringing the action would have run within the 120-day
14 period next following the filing of the action, or the court
15 finds that dismissal of the action for failure to comply with
16 subdivision (b) would result in substantial prejudice to
17 one of the parties.

18 (d) Once a civil action specified in subdivision (a) to
19 enforce the governing documents has been filed by either
20 an association or an owner or member of a common
21 interest development, upon written stipulation of the
22 parties the matter may be referred to alternative dispute
23 resolution and stayed. The costs of the alternative dispute
24 resolution shall be borne by the parties. During this
25 referral, the action shall not be subject to the rules
26 implementing subdivision (c) of Section 68603 of the
27 Government Code.

28 (e) The requirements of subdivisions (b) and (c) shall
29 not apply to the filing of a cross-complaint.

30 (f) In any action specified in subdivision (a) to enforce
31 the governing documents, the prevailing party shall be
32 awarded reasonable attorney's fees and costs. Upon
33 motion by any party for attorney's fees and costs to be
34 awarded to the prevailing party in these actions, the
35 court, in determining the amount of the award, may
36 consider a party's refusal to participate in alternative
37 dispute resolution prior to the filing of the action.

38 (g) Unless consented to by both parties to alternative
39 dispute resolution that is initiated by a Request for
40 Resolution under subdivision (b), evidence of anything

1 said or of admissions made in the course of the alternative
2 dispute resolution process shall not be admissible in
3 evidence, and testimony or disclosure of such a statement
4 or admission may not be compelled, in any civil action in
5 which, pursuant to law, testimony can be compelled to be
6 given.

7 (h) Unless consented to by both parties to alternative
8 dispute resolution that is initiated by a Request for
9 Resolution under subdivision (b), documents prepared
10 for the purpose or in the course of, or pursuant to, the
11 alternative dispute resolution shall not be admissible in
12 evidence, and disclosure of these documents may not be
13 compelled, in any civil action in which, pursuant to law,
14 testimony can be compelled to be given.

15 (i) Members of the association shall annually be
16 provided a summary of the provisions of this section,
17 which specifically references this section. The summary
18 shall include the following language:

19 “Failure by any member of the association to comply
20 with the prefiling requirements of Section 1354 of the
21 Civil Code may result in the loss of your rights to sue the
22 association or another member of the association
23 regarding enforcement of the governing documents.”

24 The summary shall be provided either at the time the
25 pro forma budget required by Section 1365 is distributed
26 or in the manner specified in Section 5016 of the
27 Corporations Code.

28 (j) Any Request for Resolution sent to the owner of a
29 separate interest pursuant to subdivision (b) shall include
30 a copy of this section.

31 SEC. 13. Section 1355.5 of the Civil Code is amended
32 to read:

33 1355.5. (a) Notwithstanding any provision of the
34 governing documents of a common interest development
35 to the contrary, the board of directors of the association
36 may, after the developer of the common interest
37 development has completed construction of the
38 development, has terminated construction activities, and
39 has terminated his or her marketing activities for the sale,
40 lease, or other disposition of separate interests within the

1 development, adopt an amendment deleting from any of
2 the governing documents any provision which is
3 unequivocally designed and intended, or which by its
4 nature can only have been designed or intended, to
5 facilitate the developer in completing the construction or
6 marketing of the development. However, provisions of
7 the governing documents relative to a particular
8 construction or marketing phase of the development may
9 not be deleted under the authorization of this subdivision
10 until that construction or marketing phase has been
11 completed.

12 (b) The provisions which may be deleted by action of
13 the board shall be limited to those which provide for
14 access by the developer over or across the common area
15 for the purposes of (a) completion of construction of the
16 development, and (b) the erection, construction, or
17 maintenance of structures or other facilities designed to
18 facilitate the completion of construction or marketing of
19 separate interests.

20 (c) At least 30 days prior to taking action pursuant to
21 subdivision (a), the board of directors of the association
22 shall mail to all owners of the separate interests, by
23 first-class mail, (1) a copy of all amendments to the
24 governing documents proposed to be adopted under
25 subdivision (a) and (2) a notice of the time, date, and
26 place the board of directors will consider adoption of the
27 amendments. The board of directors of an association
28 may consider adoption of amendments to the governing
29 documents pursuant to subdivision (a) only at a meeting
30 which is open to all owners of the separate interests in the
31 common interest development, who shall be given
32 opportunity to make comments thereon. All
33 deliberations of the board of directors on any action
34 proposed under subdivision (a) shall only be conducted
35 in an open meeting.

36 (d) The board of directors of the association may not
37 amend the governing documents pursuant to this section
38 without the approval of the owners, casting a majority of
39 the votes at a meeting or election of the association
40 constituting a quorum and conducted in accordance with

1 Chapter 5 (commencing with Section 7510) of Part 3 of
2 Division 2 of Title 1 of, and Section 7613 of, the
3 Corporations Code. For the purposes of this section,
4 “quorum” means more than 50 percent of the owners
5 who own no more than two separate interests in the
6 development.

7 (e) Nothing in this section shall be construed to affect
8 the rights of a participating homebuilder under a
9 California Home Construction Warranty that is
10 applicable to the common interest development or the
11 individual units contained therein.

12 SEC. 14. Section 1356 of the Civil Code is amended to
13 read:

14 1356. (a) If in order to amend a declaration, the
15 declaration requires owners having more than 50 percent
16 of the votes in the association, in a single class voting
17 structure, or owners having more than 50 percent of the
18 votes in more than one class in a voting structure with
19 more than one class, to vote in favor of the amendment,
20 the association, or any owner of a separate interest, may
21 petition the superior court of the county in which the
22 common interest development is located for an order
23 reducing the percentage of the affirmative votes
24 necessary for such an amendment. The petition shall
25 describe the effort that has been made to solicit approval
26 of the association members in the manner provided in the
27 declaration, the number of affirmative and negative votes
28 actually received, the number or percentage of
29 affirmative votes required to effect the amendment in
30 accordance with the existing declaration, and other
31 matters the petitioner considers relevant to the court’s
32 determination. The petition shall also contain, as exhibits
33 thereto, copies of all of the following:

34 (1) The governing documents.

35 (2) A complete text of the amendment.

36 (3) Copies of any notice and solicitation materials
37 utilized in the solicitation of owner approvals.

38 (4) A short explanation of the reason for the
39 amendment.

1 (5) Any other documentation relevant to the court's
2 determination.

3 (b) Upon filing the petition, the court shall set the
4 matter for hearing and issue an ex parte order setting
5 forth the manner in which notice shall be given.

6 (c) The court may, but shall not be required to, grant
7 the petition if it finds all of the following:

8 (1) The petitioner has given not less than 15 days
9 written notice of the court hearing to all members of the
10 association, to any mortgagee of a mortgage or
11 beneficiary of a deed of trust who is entitled to notice
12 under the terms of the declaration, and to the city,
13 county, or city and county in which the common interest
14 development is located that is entitled to notice under the
15 terms of the declaration.

16 (2) Balloting on the proposed amendment was
17 conducted in accordance with all applicable provisions of
18 the governing documents.

19 (3) A reasonably diligent effort was made to permit all
20 eligible members to vote on the proposed amendment.

21 (4) Owners having more than 50 percent of the votes,
22 in a single class voting structure, voted in favor of the
23 amendment. In a voting structure with more than one
24 class, where the declaration requires a majority of more
25 than one class to vote in favor of the amendment, owners
26 having more than 50 percent of the votes of each class
27 required by the declaration to vote in favor of the
28 amendment voted in favor of the amendment.

29 (5) The amendment is reasonable.

30 (6) Granting the petition is not improper for any
31 reason stated in subdivision (e).

32 (d) If the court makes the findings required by
33 subdivision (c), any order issued pursuant to this section
34 may confirm the amendment as being validly approved
35 on the basis of the affirmative votes actually received
36 during the balloting period or the order may dispense
37 with any requirement relating to quorums or to the
38 number or percentage of votes needed for approval of the
39 amendment that would otherwise exist under the
40 governing documents.

(e) Subdivisions (a) to (d), inclusive, notwithstanding, the court shall not be empowered by this section to approve any amendment to the declaration that:

(1) Would change provisions in the declaration requiring the approval of owners having more than 50 percent of the votes in more than one class to vote in favor of an amendment, unless owners having more than 50 percent of the votes in each affected class approved the amendment.

(2) Would eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant.

(3) Would impair the security interest of a mortgagee of a mortgage or the beneficiary of a deed of trust without the approval of the percentage of the mortgagees and beneficiaries specified in the declaration, if the declaration requires the approval of a specified percentage of the mortgagees and beneficiaries.

(4) Would impair the rights, duties, and obligations of the parties to a California Home Construction Warranty.

(f) An amendment is not effective pursuant to this section until the court order and amendment have been recorded in every county in which a portion of the common interest development is located. The amendment may be acknowledged by, and the court order and amendment may be recorded by, any person designated in the declaration or by the association for that purpose, or if no one is designated for that purpose, by the president of the association. Upon recordation of the amendment and court order, the declaration, as amended in accordance with this section, shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by the governing documents.

(g) Within a reasonable time after the amendment is recorded the association shall mail a copy of the amendment to each member of the association, together with a statement that the amendment has been recorded.

1 SEC. 15. Section 1357 of the Civil Code is amended to
2 read:

3 1357. (a) The Legislature finds that there are
4 common interest developments that have been created
5 with deed restrictions which do not provide a means for
6 the property owners to extend the term of the
7 declaration. The Legislature further finds that covenants
8 and restrictions, contained in the declaration, are an
9 appropriate method for protecting the common plan of
10 developments and to provide for a mechanism for
11 financial support for the upkeep of common areas
12 including, but not limited to, roofs, roads, heating
13 systems, and recreational facilities. If declarations
14 terminate prematurely, common interest developments
15 may deteriorate and the housing supply of affordable
16 units could be impacted adversely.

17 The Legislature further finds and declares that it is in
18 the public interest to provide a vehicle for extending the
19 term of the declaration if owners having more than 50
20 percent of the votes in the association choose to do so.

21 (b) A declaration which specifies a termination date,
22 but which contains no provision for extension of the
23 termination date, may be extended by the approval of
24 owners having more than 50 percent of the votes in the
25 association or any greater percentage specified in the
26 declaration for an amendment thereto. If the approval of
27 owners having more than 50 percent of the votes in the
28 association is required to amend the declaration, the term
29 of the declaration may be extended in accordance with
30 Section 1356.

31 (c) Any amendment to a declaration made in
32 accordance with subdivision (b) shall become effective
33 upon recordation in accordance with Section 1355.

34 (d) No single extension of the terms of the declaration
35 made pursuant to this section shall exceed the initial term
36 of the declaration or 20 years, whichever is less. However,
37 more than one extension may occur pursuant to this
38 section.

(e) Nothing in this section shall be construed to allow for the extension of the terms of a California Home Construction Warranty.

SEC. 16. Section 1364 of the Civil Code is amended to read:

1364. (a) Unless otherwise provided in the declaration of a common interest development, and subject to the terms and conditions of a California Home Construction Warranty, if applicable, the association is responsible for repairing, replacing, or maintaining the common areas, other than exclusive use common areas, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest.

(b) (1) In a community apartment project, condominium project, or stock cooperative, as defined in Section 1351, unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms.

(2) In a planned development as defined in Section 1351, unless a different maintenance scheme is provided in the declaration, each owner of a separate interest is responsible for the repair and maintenance of that separate interest as may be occasioned by the presence of wood-destroying pests or organisms. Upon approval of the majority of all members of the association, the responsibility for repair and maintenance may be delegated to the association, which shall be entitled to recover the cost thereof as a special assessment.

(c) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

(d) (1) The association may cause the temporary, summary removal of any occupant of a common interest development for periods and at times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.

1 (2) The association shall give notice of the need to
2 temporarily vacate a separate interest to the occupants
3 and to the owners, not less than 15 days nor more than 30
4 days prior to the date of the temporary relocation. The
5 notice shall state the reason for the temporary relocation,
6 the date and time of the beginning of treatment, the
7 anticipated date and time of termination of treatment,
8 and that the occupants will be responsible for their own
9 accommodations during the temporary relocation.

10 (3) Notice by the association shall be deemed
11 complete upon either:

12 (A) Personal delivery of a copy of the notice to the
13 occupants, and sending a copy of the notice to the owners,
14 if different than the occupants, by first-class mail, postage
15 prepaid at the most current address shown on the books
16 of the association.

17 (B) By sending a copy of the notice to the occupants
18 at the separate interest address and a copy of the notice
19 to the owners, if different than the occupants, by
20 first-class mail, postage prepaid, at the most current
21 address shown on the books of the association.

22 (e) For purposes of this section, “occupant” means an
23 owner, resident, guest, invitee, tenant, lessee, sublessee,
24 or other person in possession on the separate interest.

25 (f) Notwithstanding the provisions of the declaration,
26 the owner of a separate interest is entitled to reasonable
27 access to the common areas for the purpose of
28 maintaining the internal and external telephone wiring
29 made part of the exclusive use common areas of a
30 separate interest pursuant to paragraph (2) of subdivision
31 (i) of Section 1351. The access shall be subject to the
32 consent of the association, whose approval shall not be
33 unreasonably withheld, and which may include the
34 association’s approval of telephone wiring upon the
35 exterior of the common areas, and other conditions as the
36 association determines reasonable.

37 SEC. 17. Section 1365 of the Civil Code is amended to
38 read:

1 1365. Unless the governing documents impose more
2 stringent standards, the association shall prepare and
3 distribute to all of its members the following documents:

4 (a) A pro forma operating budget, which shall include
5 all of the following:

6 (1) The estimated revenue and expenses on an accrual
7 basis.

8 (2) A summary of the association's reserves based
9 upon the most recent review or study conducted
10 pursuant to Section 1365.5, which shall be printed in
11 boldface type and include all of the following:

12 (A) The current estimated replacement cost,
13 estimated remaining life, and estimated useful life of each
14 major component.

15 (B) As of the end of the fiscal year for which the study
16 is prepared:

17 (i) The current estimate of the amount of cash
18 reserves necessary to repair, replace, restore, or maintain
19 the major components.

20 (ii) The current amount of accumulated cash reserves
21 actually set aside to repair, replace, restore, or maintain
22 major components.

23 (iii) If applicable, the amount of funds received from
24 either a compensatory damage award or settlement to an
25 association from any person or entity for injuries to
26 property, real or personal, arising out of any construction
27 or design defects, and the expenditure or disposition of
28 funds, including the amounts expended for the direct and
29 indirect costs of repair of construction or design defects.
30 These amounts shall be reported at the end of the fiscal
31 year for which the study is prepared as separate line items
32 under cash reserves pursuant to clause (ii). In lieu of
33 complying with the requirements set forth in this clause,
34 an association that is obligated to issue a review of their
35 financial statement pursuant to subdivision (b) may
36 include in the review a statement containing all of the
37 information required by this clause.

38 (C) The percentage that the amount determined for
39 purposes of clause (ii) subparagraph (B) equals of the

1 amount determined for purposes of clause (i) of
2 subparagraph (B).

3 (3) A statement as to whether the board of directors of
4 the association has determined or anticipates that the
5 levy of one or more special assessments will be required
6 to repair, replace, or restore any major component or to
7 provide adequate reserves therefor.

8 (4) A general statement addressing the procedures
9 used for the calculation and establishment of those
10 reserves to defray the future repair, replacement, or
11 additions to those major components that the association
12 is obligated to maintain.

13 The summary of the association's reserves disclosed
14 pursuant to paragraph (2) shall not be admissible in
15 evidence to show improper financial management of an
16 association, provided that other relevant and competent
17 evidence of the financial condition of the association is not
18 made inadmissible by this provision.

19 A copy of the operating budget shall be annually
20 distributed not less than 45 days nor more than 60 days
21 prior to the beginning of the association's fiscal year.

22 (b) A review of the financial statement of the
23 association shall be prepared in accordance with
24 generally accepted accounting principles by a licensee of
25 the California State Board of Accountancy for any fiscal
26 year in which the gross income to the association exceeds
27 seventy-five thousand dollars (\$75,000). A copy of the
28 review of the financial statement shall be distributed
29 within 120 days after the close of each fiscal year.

30 (c) In lieu of the distribution of the pro forma
31 operating budget required by subdivision (a), the board
32 of directors may elect to distribute a summary of the pro
33 forma operating budget to all of its members with a
34 written notice that the pro forma operating budget is
35 available at the business office of the association or at
36 another suitable location within the boundaries of the
37 development, and that copies will be provided upon
38 request and at the expense of the association. If any
39 member requests that a copy of the pro form a operating
40 budget required by subdivision (a) be mailed to the

1 member, the association shall provide the copy to the
2 member by first-class United States mail at the expense
3 of the association and delivered within five days. The
4 written notice that is distributed to each of the association
5 members shall be in at least 10-point boldface type on the
6 front page of the summary of the budget.

7 (d) A statement describing the association's policies
8 and practices in enforcing lien rights or other legal
9 remedies for default in payment of its assessments against
10 its members shall be annually delivered to the members
11 during the 60-day period immediately preceding the
12 beginning of the association's fiscal year.

13 (e) (1) A summary of the association's property,
14 general liability, and earthquake and flood insurance
15 policies, which shall be distributed within 60 days
16 preceding the beginning of the association's fiscal year,
17 that includes all of the following information about each
18 policy:

19 (A) The name of the insurer.

20 (B) The type of insurance.

21 (C) The policy limits of the insurance.

22 (D) The amount of deductibles, if any.

23 (2) The association shall, as soon as reasonably
24 practicable, notify its members by first-class mail if any of
25 the policies described in paragraph (1) have lapsed, been
26 canceled, and are not immediately renewed, restored, or
27 replaced, or if there is a significant change, such as a
28 reduction in coverage or limits or an increase in the
29 deductible, as to any of those policies. If the association
30 receives any notice of nonrenewal of a policy described
31 in paragraph (1), the association shall immediately notify
32 its members if replacement coverage will not be in effect
33 by the date the existing coverage will lapse.

34 (3) To the extent that any of the information required
35 to be disclosed pursuant to paragraph (1) is specified in
36 the insurance policy declaration page, the association
37 may meet its obligation to disclose that information by
38 making copies of that page and distributing it to all of its
39 members.

1 (4) The summary distributed pursuant to paragraph
2 (1) shall contain, in at least 10-point boldface type, the
3 following statement: “This summary of the association’s
4 policies of insurance provides only certain information, as
5 required by subdivision (e) of Section 1365 of the Civil
6 Code, and should not be considered a substitute for the
7 complete policy terms and conditions contained in the
8 actual policies of insurance. Any association member
9 may, upon request and provision of reasonable notice,
10 review the association’s insurance policies and, upon
11 request and payment of reasonable duplication charges,
12 obtain copies of those policies. Although the association
13 maintains the policies of insurance specified in this
14 summary, the association’s policies of insurance may not
15 cover your property, including personal property or, real
16 property improvements to or around your dwelling, or
17 personal injuries or other losses that occur within or
18 around your dwelling. Even if a loss is covered, you may
19 nevertheless be responsible for paying all or a portion of
20 any deductible that applies. Association members should
21 consult with their individual insurance broker or agent
22 for appropriate additional coverage.”

23 (f) A summary of the terms and conditions of a
24 California Home Construction Warranty issued to the
25 association, which shall include the following
26 information:

27 (1) The name, address, and telephone number of the
28 homebuilder and warranty administrator who is
29 responsible for the processing of claims.

30 (2) The process for the filing of a claim under the
31 warranty.

32 (3) A summary of the alternative dispute resolution
33 provisions of the warranty, including the process for
34 binding arbitration, if applicable.

35 (4) A copy of the warranty issued to the association
36 shall be provided to an owner of a separate interest upon
37 request.

38 SEC. 18. Section 1365.7 of the Civil Code is amended
39 to read:

1 1365.7. (a) A volunteer officer or volunteer director
2 of an association, as defined in subdivision (a) of Section
3 1351, which manages a common interest development
4 that is exclusively residential, shall not be personally
5 liable in excess of the coverage of insurance specified in
6 paragraph (4) to any person who suffers injury, including,
7 but not limited to, bodily injury, emotional distress,
8 wrongful death, or property damage or loss as a result of
9 the tortious act or omission of the volunteer officer or
10 volunteer director if all of the following criteria are met:

11 (1) The act or omission was performed within the
12 scope of the officer's or director's association duties.

13 (2) The act or omission was performed in good faith.

14 (3) The act or omission was not willful, wanton, or
15 grossly negligent.

16 (4) The association maintained and had in effect at the
17 time the act or omission occurred and at the time a claim
18 is made one or more policies of insurance which shall
19 include coverage for (A) general liability of the
20 association and (B) individual liability of officers and
21 directors of the association for negligent acts or omissions
22 in that capacity; provided, that both types of coverage are
23 in the following minimum amount:

24 (A) At least five hundred thousand dollars (\$500,000)
25 if the common interest development consists of 100 or
26 fewer separate interests.

27 (B) At least one million dollars (\$1,000,000) if the
28 common interest development consists of more than 100
29 separate interests.

30 (b) The payment of actual expenses incurred by a
31 director or officer in the execution of the duties of that
32 position does not affect the director's or officer's status as
33 a volunteer within the meaning of this section.

34 (c) An officer or director who at the time of the act or
35 omission was a declarant, as defined in subdivision (g) of
36 Section 1351, or who received either direct or indirect
37 compensation as an employee from the declarant, or from
38 a financial institution that purchased a separate interest,
39 as defined in subdivision (l) of Section 1351, at a judicial
40 or nonjudicial foreclosure of a mortgage or deed of trust

1 on real property, is not a volunteer for the purposes of this
2 section.

3 (d) Nothing in this section shall be construed to limit
4 the liability of the association for its negligent act or
5 omission or for any negligent act or omission of an officer
6 or director of the association.

7 (e) This section shall only apply to a volunteer officer
8 or director who is a tenant of a separate interest in the
9 common interest development or is an owner of no more
10 than two separate interests in the common interest
11 development.

12 (f) (1) For purposes of paragraph (1) of subdivision
13 (a), the scope of the officer's or director's association
14 duties shall include, but shall not be limited to, both of the
15 following decisions:

16 (A) Whether to conduct an investigation of the
17 common interest development for latent deficiencies
18 prior to the expiration of the applicable statute of
19 limitations or within the term of a California Home
20 Construction Warranty, if applicable.

21 (B) Whether to commence a civil action against the
22 builder for defects in design or construction.

23 (2) It is the intent of the Legislature that this section
24 clarify the scope of association duties to which the
25 protections against personal liability in this section apply.
26 It is not the intent of the Legislature that these
27 clarifications be construed to expand, or limit, the
28 fiduciary duties owed by the directors or officers.

29 SEC. 19. Section 1368 of the Civil Code is amended to
30 read:

31 1368. (a) The owner of a separate interest, other than
32 an owner subject to the requirements of Section 11018.6
33 of the Business and Professions Code, shall, as soon as
34 practicable before transfer of title to the separate interest
35 or execution of a real property sales contract therefor, as
36 defined in Section 2985, provide the following to the
37 prospective purchaser:

38 (1) A copy of the governing documents of the common
39 interest development, including a copy of the California

1 Home Construction Warranty that may be applicable to
2 the association or owner of the separate interest.

3 (2) If there is a restriction in the governing documents
4 limiting the occupancy, residency, or use of a separate
5 interest on the basis of age in a manner different from that
6 provided in Section 51.3, a statement that the restriction
7 is only enforceable to the extent permitted by Section
8 51.3 and a statement specifying the applicable provisions
9 of Section 51.3.

10 (3) A copy of the most recent documents distributed
11 pursuant to Section 1365.

12 (4) A true statement in writing from an authorized
13 representative of the association as to the amount of the
14 association's current regular and special assessments and
15 fees, as well as any assessments levied upon the owner's
16 interest in the common interest development which are
17 unpaid on the date of the statement. The statement shall
18 also include true information on late charges, interest,
19 and costs of collection which, as of the date of the
20 statement, are or may be made a lien upon the owner's
21 interest in a common interest development pursuant to
22 Section 1367.

23 (5) A copy of the preliminary list of defects provided
24 to each member of the association pursuant to Section
25 1375, unless the association and the builder subsequently
26 enter into a settlement agreement or otherwise resolve
27 the matter and the association complies with Section
28 1375.1. Disclosure of the preliminary list of defects
29 pursuant to this paragraph shall not waive any privilege
30 attached to the document. The preliminary list of defects
31 shall also include a statement that a final determination
32 as to whether the list of defects is accurate and complete
33 has not been made.

34 (6) A copy of the latest information provided for in
35 Section 1375.1.

36 (7) Any change in the association's current regular
37 and special assessments and fees which have been
38 approved by the association's board of directors, but have
39 not become due and payable as of the date disclosure is
40 provided pursuant to this subdivision.

1 (b) Upon written request, an association shall, within
2 10 days of the mailing or delivery of the request, provide
3 the owner of a separate interest with a copy of the
4 requested items specified in paragraphs (1) to (7),
5 inclusive, of subdivision (a). The association may charge
6 a fee for this service, which shall not exceed the
7 association's reasonable cost to prepare and reproduce
8 the requested items.

9 (c) An association shall not impose or collect any
10 assessment, penalty, or fee in connection with a transfer
11 of title or any other interest except the association's actual
12 costs to change its records and that authorized by
13 subdivision (b).

14 (d) Any person or entity who willfully violates this
15 section shall be liable to the purchaser of a separate
16 interest which is subject to this section for actual damages
17 occasioned thereby and, in addition, shall pay a civil
18 penalty in an amount not to exceed five hundred dollars
19 (\$500). In an action to enforce this liability, the prevailing
20 party shall be awarded reasonable attorneys' fees.

21 (e) Nothing in this section affects the validity of title
22 to real property transferred in violation of this section.

23 (f) In addition to the requirements of this section, an
24 owner transferring title to a separate interest shall
25 comply with applicable requirements of Sections 1133
26 and 1134.

27 SEC. 20. Section 1368.4 of the Civil Code is amended
28 to read:

29 1368.4. (a) Not later than 30 days prior to the filing of
30 any civil action by the association against the declarant or
31 other developer of a common interest development, or
32 the initiation of the alternative dispute process under a
33 California Home Construction Warranty, if applicable,
34 for alleged damage to the common areas, alleged damage
35 to the separate interests that the association is obligated
36 to maintain or repair, or alleged damage to the separate
37 interests that arises out of, or is integrally related to,
38 damage to the common areas or separate interests that
39 the association is obligated to maintain or repair, the
40 board of directors of the association shall provide

1 written notice to each member of the association who
2 appears on the records of the association when the notice
3 is provided. This notice shall specify all of the following:

4 (1) That a meeting will take place to discuss problems
5 that may lead to the filing of a civil action.

6 (2) The options, including civil actions, that are
7 available to address the problems.

8 (3) The time and place of this meeting.

9 (b) Notwithstanding subdivision (a), if the association
10 has reason to believe that the applicable statute of
11 limitations will expire before the association files the civil
12 action, the association may give the notice, as described
13 above, within 30 days after the filing of the action.

14 SEC. 21. Section 1375 of the Civil Code is amended to
15 read:

16 1375. (a) This section, and the procedures and
17 requirements established herein, shall not be applicable
18 where the association has contracted for a California
19 Home Construction Warranty that provides for both an
20 alternative process for the filing of complaints, inquiries,
21 and claims, and an alternative process for the resolution
22 of disputes, including binding arbitration.

23 (b) Before an association commences an action for
24 damages against a builder of a common interest
25 development based upon a claim for defects in the design
26 or construction of the common interest development, all
27 of the requirements of subdivisions (b) to (g), inclusive,
28 shall be met, except as otherwise provided in this section.

29 (c) (1) The association shall give written notice to the
30 builder against whom the claim is made. This notice shall
31 include all of the following:

32 (A) A preliminary list of defects.

33 (B) A summary of the results of a survey or
34 questionnaire distributed to homeowners to determine
35 the nature and extent of defects, if this survey has been
36 conducted or a questionnaire has been distributed.

37 (C) Either a summary of the results of testing
38 conducted to determine the nature and extent of defects
39 or the actual test results, if this testing has been
40 conducted.

1 (2) The association's notice shall, upon delivery of the
2 notice to the builder, commence a period of time not to
3 exceed 90 days, unless the association and builder agree
4 to a longer period, during which the association and
5 builder shall either, in accordance with the requirements
6 of this section, attempt to settle the dispute or attempt to
7 agree to submit it to alternative dispute resolution.

8 (3) (A) Except as provided in this section and
9 notwithstanding any other provision of law, the notice by
10 the association shall, upon mailing, toll all statutory and
11 contractual limitations on actions against all parties who
12 may be responsible for the defects claimed, whether
13 named in the notice or not, including claims for
14 indemnity applicable to the claim, for a period of 150 days
15 or a longer period agreed to in writing by the association
16 and the builder.

17 (B) At any time, the builder may give written notice
18 to cancel the tolling of the statute of limitations provided
19 in this section. Upon delivery of this written cancellation
20 notice, the association shall be relieved of any further
21 obligation to satisfy the requirements of this subdivision
22 and subdivisions (c) to (e), inclusive. The tolling of all
23 applicable statutes of limitations shall cease 60 days after
24 the written notice of cancellation by the builder is
25 delivered to the association.

26 (d) (1) Within 25 days of the date the association
27 delivers the notice required by subdivision (b), the
28 builder may request in writing to meet and confer with
29 the board of directors of the association, and to inspect the
30 project and conduct testing, including testing that may
31 cause physical damage to any property in the
32 development, in order to evaluate the claim. If the
33 builder does not make a timely request to meet and
34 confer with the board of directors of the association, or to
35 conduct inspection and testing, the association shall be
36 relieved of any further obligation to satisfy the
37 requirements of this subdivision and subdivisions (d) and
38 (e). Unless the builder and association otherwise agree,
39 the meeting shall take place no later than 10 days from the
40 date of the builder's written request, at a mutually

1 agreeable time and place. The meeting shall be subject to
2 subdivision (g) of Section 1363. The discussions at the
3 meeting are privileged communications and are not
4 admissible in evidence in any civil action, unless the
5 association and builder consent to their admission. The
6 meeting shall be for the purpose of discussing all of the
7 following:

8 (A) The nature and extent of the claimed defects.

9 (B) Proposed methods of correction, to the extent
10 there is sufficient information.

11 (C) Proposals for submitting the dispute to alternative
12 dispute resolution.

13 (D) Requests from the builder to inspect the project
14 and conduct testing.

15 (2) If the builder requests in writing to meet and
16 confer with the board of directors of the association
17 pursuant to paragraph (1) of this subdivision, the builder
18 shall deliver the notice provided by the association to the
19 builder pursuant to subdivision (b) to any insurer that has
20 issued a policy to the builder which imposes upon the
21 insurer a duty to defend the insured or indemnify the
22 insured for losses resulting from the defects identified in
23 the notice required by subdivision (b). The notice by the
24 builder shall, upon receipt, impose upon that insurer any
25 obligation which would be imposed under the terms of
26 the policy if the insured had been served with a summons
27 and complaint for damages. The builder shall inform the
28 association when the builder delivers the notice to each
29 insurer pursuant to this paragraph.

30 (e) (1) If the association conducted inspection and
31 testing prior to the date it sent the written notice
32 pursuant to subdivision (b), the association shall, at the
33 earliest practicable date after the meeting held pursuant
34 to subdivision (c), make available for inspection and
35 testing at least those areas inspected or tested by the
36 association. The inspection and testing shall be completed
37 within 15 days from the date the association makes these
38 areas available for inspection and testing, unless the
39 association and builder agree to a longer period. If the
40 builder does not timely complete the inspection and

1 testing, the association shall be relieved of any further
2 obligation to satisfy the requirements of this subdivision
3 and subdivision (e). The manner in which the inspection
4 and testing shall be conducted, and the extent of any
5 inspection and testing to be conducted beyond that
6 which was conducted by the association prior to sending
7 the notice, shall be set by agreement of the association
8 and builder.

9 (2) The builder shall pay all costs of inspection and
10 testing that is requested by the builder, shall restore the
11 property to the condition which existed immediately
12 prior to the testing, and shall indemnify the association
13 and owner of the separate interest for any damages
14 resulting from the testing.

15 (3) Interior inspections of occupied separate interests
16 and destructive testing of any interior of a separate
17 interest shall be conducted in accordance with the
18 governing documents of the association, unless otherwise
19 agreed to by the owner of the separate interest. If the
20 governing documents of the association do not provide
21 for inspection or testing of separate interests, this
22 inspection or testing shall be conducted in a manner and
23 at a time agreed to by the owner of the separate interest.

24 (4) The results of the inspection and testing shall not
25 be inadmissible in evidence in any civil action solely
26 because the inspection and testing was conducted
27 pursuant to this section.

28 (f) (1) Within 30 days of the completion of inspection
29 and testing or within 30 days of a meeting held pursuant
30 to subdivision (c) if no inspection and testing is
31 conducted pursuant to subdivision (d), the builder shall
32 submit to the association all of the following:

33 (A) A request to meet with the board to discuss a
34 written settlement offer.

35 (B) A written settlement offer, and a concise
36 explanation of the specific reasons for the terms of the
37 offer. This offer may include an offer to submit the
38 dispute to alternative dispute resolution.



1 (C) A statement that the builder has access to
2 sufficient funds to satisfy the conditions of the settlement
3 offer.

4 (D) A summary of the results of testing conducted for
5 the purpose of determining the nature and extent of
6 defects, if this testing has been conducted, unless the
7 association provided the builder with actual test results
8 pursuant to subdivision (b), in which case the builder
9 shall provide the association with actual test results.

10 (2) If the builder does not timely submit the items
11 required by this subdivision, the association shall be
12 relieved of any further obligation to satisfy the
13 requirements of this subdivision only.

14 (3) No less than 10 days after the builder submits the
15 items required by this paragraph, the builder and the
16 board of directors of the association shall meet and confer
17 about the builder's settlement offer, including any offer
18 to submit the dispute to alternative dispute resolution.

19 (g) (1) At any time after the notice required by
20 subdivision (b) is delivered to the builder, the association
21 and builder may agree in writing to modify or excuse any
22 of the time periods or other obligations imposed by this
23 section.

24 (2) Except for the notice required pursuant to
25 subdivision (g), all notices, requests, statements, or other
26 communications required pursuant to this section shall be
27 delivered by one of the following:

28 (A) By first-class registered or certified mail, return
29 receipt requested.

30 (B) In any manner in which it is permissible to serve
31 a summons pursuant to Section 415.10 or 415.20 of the
32 Code of Civil Procedure.

33 (h) If the board of directors of the association rejects
34 a settlement offer presented at the meeting held
35 pursuant to subdivision (e), the board shall comply with
36 the requirements of paragraph (1) of this subdivision. If
37 the association is relieved of its obligation to satisfy the
38 requirements of subdivisions (a) to (e), inclusive, before
39 all those requirements are satisfied, the association shall
40 comply with the requirements of paragraph (2) of this

1 subdivision. Under no circumstances shall the association
2 be required to comply with both paragraph (1) and
3 paragraph (2) of this subdivision.

4 (1) (A) If the association's board of directors rejects a
5 settlement offer presented at the meeting held pursuant
6 to subdivision (e), the board shall hold a meeting open to
7 each member of the association. The meeting shall be
8 held no less than 15 days before the association
9 commences an action for damages against the builder.

10 (B) No less than 15 days before this meeting is held, a
11 written notice shall be sent to each member of the
12 association specifying all of the following:

13 (i) That a meeting will take place to discuss problems
14 that may lead to the filing of a civil action, and the time
15 and place of this meeting.

16 (ii) The options that are available to address the
17 problems, including the filing of a civil action and a
18 statement of the various alternatives that are reasonably
19 foreseeable by the association to pay for those options and
20 whether these payments are expected to be made from
21 the use of reserve account funds or the imposition of
22 regular or special assessments, or emergency assessment
23 increases.

24 (iii) The complete text of any written settlement offer,
25 and a concise explanation of the specific reasons for the
26 terms of the offer submitted to the board pursuant to
27 paragraph (1) of subdivision (e), received from the
28 builder and of any offer by the builder to submit the
29 dispute to alternative dispute resolution.

30 (iv) The preliminary list of defects provided by the
31 association to the builder pursuant to subdivision (b) and
32 a list of any other documents provided by the association
33 to the builder pursuant to subdivision (b), and
34 information about where and when members of the
35 association may inspect those documents.

36 (C) The builder shall pay all expenses attributable to
37 sending the settlement offer and any offer for alternative
38 dispute resolution to all members of the association. The
39 builder shall also pay the expense of holding the meeting,
40 not to exceed three dollars (\$3) per association member.

(D) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (B), are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(E) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(2) If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements have been satisfied, the association may commence an action for damages against the builder 30 days after sending a written notice to each member specifying all of the following:

(A) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b), and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(B) The options, including civil actions, that are available to address the problems.

(C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held, unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case, the statement shall inform the members of that procedure.

(D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(i) (1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the

1 association against the builder after such an action has
2 been filed. A verified application asserting such a
3 procedural deficiency shall be filed with the court no later
4 than 90 days after the answer to the plaintiff's complaint
5 has been served, unless the court finds that extraordinary
6 conditions exist.

7 (2) Upon the verified application of the association or
8 the builder alleging substantial noncompliance with this
9 section, the court shall schedule a hearing within 21 days
10 of the application to determine whether the association
11 or builder has substantially complied with this section.
12 The issue may be determined upon affidavits or upon oral
13 testimony, in the discretion of the court.

14 (3) (A) If the court finds that the association did not
15 substantially comply with this section, the court shall stay
16 the action for up to 90 days to allow the association to
17 establish substantial compliance. The court shall set a
18 hearing within 90 days to determine substantial
19 compliance by the association. At any time, the court
20 may, for good cause shown, extend the period of the stay
21 upon application of the association.

22 (B) If, within the time set by the court pursuant to this
23 section, the association has not established that it has
24 substantially complied with this section, the court shall
25 determine if, in the interest of justice, the action should
26 be dismissed without prejudice, or if another remedy
27 should be fashioned. Under no circumstances shall the
28 court dismiss the action with prejudice as a result of the
29 association's failure to substantially comply with this
30 section. In determining the appropriate remedy, the
31 court shall consider the extent to which the builder has
32 complied with this section.

33 (C) If the alleged noncompliance of either the builder
34 or the association resulted from the unreasonable
35 withholding of consent for inspection or testing by an
36 owner of a separate interest, it shall not be considered
37 substantial noncompliance, provided that the party
38 alleged to be out of compliance did not encourage the
39 withholding of consent.



(4) If the court finds that the builder did not pay all of the costs of inspection and testing pursuant to paragraph (3) of subdivision (a), or that the builder did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to subparagraph (C) of paragraph (1) of subdivision (g) of this section, the court shall order the builder to pay any deficiencies within 30 days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

(j) As used in this section:

(1) “Association” shall have the same meaning as defined in subdivision (a) of Section 1351.

(2) “Builder” means the declarant, as defined in subdivision (g) of Section 1351.

(3) “Common interest development” shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

SEC. 22. Section 1375.1 of the Civil Code is amended to read:

1375.1. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved, including the resolution of alleged defects pursuant to the terms and conditions of a California Home Construction Warranty, if applicable, regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

1 (1) A general description of the defects that the
2 association reasonably believes, as of the date of the
3 disclosure, will be corrected or replaced.

4 (2) A good faith estimate, as of the date of the
5 disclosure, of when the association believes that the
6 defects identified in paragraph (1) will be corrected or
7 replaced. The association may state that the estimate may
8 be modified.

9 (3) The status of the claims for defects in the design or
10 construction of the common interest development that
11 were not identified in paragraph (1) whether expressed
12 in a preliminary list of defects sent to each member of the
13 association or otherwise claimed and disclosed to the
14 members of the association.

15 (b) Nothing in this section shall preclude an
16 association from amending the disclosures required
17 pursuant to subdivision (a), and any amendments shall
18 supersede any prior conflicting information disclosed to
19 the members of the association and shall retain any
20 privilege attached to the original disclosures.

21 (c) Disclosure of the information required pursuant to
22 subdivision (a) or authorized by subdivision (b) shall not
23 waive any privilege attached to the information.

24 (d) For the purposes of the disclosures required
25 pursuant to this section, the term “defects” shall be
26 defined to include any damage resulting from defects.

27 SEC. 23. Section 1298 of the Code of Civil Procedure
28 is amended to read:

29 1298. (a) Whenever any contract to convey real
30 property, or contemplated to convey real property in the
31 future, including marketing contracts, deposit receipts,
32 real property sales contracts as defined in Section 2985 of
33 the Civil Code, leases together with options to purchase,
34 or ground leases coupled with improvements, but not
35 including powers of sale contained in deeds of trust or
36 mortgages, contains a provision for binding arbitration of
37 any dispute between the principals in the transaction,
38 including disputes arising under a California Homebuyer
39 Warranty issued pursuant to Chapter 4 (commencing
40 with Section 17800) of Part 3 of Division 7 of the Business

1 and Professions Code that may apply to the real property
2 in question, the contract shall have that provision clearly
3 titled “ARBITRATION OF DISPUTES.”

4 If a provision for binding arbitration is included in a
5 printed contract, it shall be set out in at least 8-point
6 boldface type or in contrasting red in at least 8-point type,
7 and if the provision is included in a typed contract, it shall
8 be set out in capital letters.

9 (b) Whenever any contract or agreement between
10 principals and agents in real property sales transactions,
11 including listing agreements, as defined in Section 1086
12 of the Civil Code, contains a provision requiring binding
13 arbitration of any dispute between the principals and
14 agents in the transaction, the contract or agreement shall
15 have that provision clearly titled “ARBITRATION OF
16 DISPUTES.”

17 If a provision for binding arbitration is included in a
18 printed contract, it shall be set out in at least 8-point
19 boldface type or in contrasting red in at least 8-point type,
20 and if the provision is included in a typed contract, it shall
21 be set out in capital letters.

22 (c) Immediately before the line or space provided for
23 the parties to indicate their assent or nonassent to the
24 arbitration provision described in subdivision (a) or (b),
25 and immediately following that arbitration provision, the
26 following shall appear:

27
28 “NOTICE: BY INITIALING IN THE SPACE BELOW
29 YOU ARE AGREEING TO HAVE ANY DISPUTE
30 ARISING OUT OF THE MATTERS INCLUDED IN
31 THE ‘ARBITRATION OF DISPUTES’ PROVISION
32 DECIDED BY NEUTRAL ARBITRATION AS
33 PROVIDED BY CALIFORNIA LAW AND YOU ARE
34 GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO
35 HAVE THE DISPUTE LITIGATED IN A COURT OR
36 JURY TRIAL. BY INITIALING IN THE SPACE BELOW
37 YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO
38 DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS
39 ARE SPECIFICALLY INCLUDED IN THE
40 ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU



1 REFUSE TO SUBMIT TO ARBITRATION AFTER
2 AGREEING TO THIS PROVISION, YOU MAY BE
3 COMPELLED TO ARBITRATE UNDER THE
4 AUTHORITY OF THE CALIFORNIA CODE OF CIVIL
5 PROCEDURE. YOUR AGREEMENT TO THIS
6 ARBITRATION PROVISION IS VOLUNTARY.”

7 “WE HAVE READ AND UNDERSTAND THE
8 FOREGOING AND AGREE TO SUBMIT DISPUTES
9 ARISING OUT OF THE MATTERS INCLUDED IN
10 THE ‘ARBITRATION OF DISPUTES’ PROVISION TO
11 NEUTRAL ARBITRATION.”

12
13 If the above provision is included in a printed contract,
14 it shall be set out either in at least 10-point boldface type
15 or in contrasting red print in at least 8-point boldface
16 type, and if the provision is included in a typed contract,
17 it shall be set out in capital letters.

18 (d) Nothing in this section shall be construed to
19 diminish the authority of any court of competent
20 jurisdiction with respect to real property transactions in
21 areas involving court supervision or jurisdiction,
22 including, but not limited to, probate, marital dissolution,
23 foreclosure of liens, unlawful detainer, or eminent
24 domain.

25 (e) In the event an arbitration provision is contained
26 in an escrow instruction, it shall not preclude the right of
27 an escrowholder to institute an interpleader action.

28 SEC. 24. Section 1298.7 of the Code of Civil Procedure
29 is amended to read:

30 1298.7. In the event an arbitration provision is
31 included in a contract or agreement covered by this title,
32 it shall not preclude or limit any right of action for bodily
33 injury or wrongful death.

34 SEC. 25. Section 120 of the Insurance Code is
35 amended to read:

36 120. Miscellaneous insurance includes insurance
37 against loss from damage done, directly or indirectly by
38 lightning, windstorm, tornado, earthquake or insurance
39 under an open policy indemnifying the producer of any
40 motion picture, television, theatrical, sport, or similar



1 production, event, or exhibition against loss by reason of
2 the interruption, postponement, or cancellation of that
3 production, event, or exhibition due to death, accidental
4 injury, or sickness preventing performers, directors, or
5 other principals from commencing or continuing their
6 respective performance or duties; and any insurance not
7 included in any of the foregoing classes, and which is a
8 proper subject of insurance. Miscellaneous insurance also
9 includes insurance indemnifying a participating
10 homebuilder, as defined in Section 17808 of the Business
11 and Professions Code, for losses incurred under a
12 California Homebuyer Warranty issued pursuant to
13 Chapter 4 (commencing with Section 17800) of Part 3 of
14 Division 7 of the Business and Professions Code.

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